IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 843

INVESTMENT COMPANY INSTITUTE, et al.,

Petitioners,

v.

WILLIAM B. CAMP, Comptroller of the Currency,

and

FIRST NATIONAL CITY BANK,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Action No. 1083-66

Investment Company Institute, by Dorsey Richardson, its President; Investors Diversified Services, Inc; Investors Management Company, Inc.; Hugh W. Long & Company, Inc.; Wellington Management Company; and Wellington Company, Inc.

Plaintiffs,

v.

James J. Saxon, Comptroller of the Currency,

Defendant,

and

First National City Bank,

Intervenor.

Date	Proceedings
1966	
April 25	Complaint filed
April 25	Complaint and summons issued to U.S. Attorney for the District of Columbia
April 25	Summons and Complaint issued to Attorney General
April 26	Service effected upon U.S. Attorney for the District of Columbia
April 27	Service effected upon the Attorney General
July 18	Answer of Defendant James J. Saxon

July 18	Case calendared
Nov. 30	Motion by Plaintiffs for summary judgment
Nov. 30	Memorandum in support of motion for summary judgment
Nov. 30	Affidavit of Robert L. Augenblick in support of Plaintiffs' motion for summary judgment
Nov. 30	Affidavit of John R. Haire in support of Plaintiffs' motion for summary judgment
Nov. 30	Affidavit of Joseph E. Welch in support of Plaintiffs' motion for summary judgment
Nov. 30	Affidavit of Stuart F. Silloway in support of Plaintiffs' motion for summary judgment
Nov. 30	Affidavit of Adron P. Trantum in support of Plaintiffs' motion for summary judgment
Nov. 30	Affidavit of James F. Fitzpatrick in support of Plaintiffs' motion for summary judgment with exhibits
1967	
April 4	Cross-motion of Defendant for summary judgment and opposition of Plaintiffs' motion for summary judgment
April 4	Affidavit of William B. Camp in support of Defendant's cross-motion for summary judgment
April 4	Affidavit of Robert L. Hoguet, Jr., in support of Defendant's cross-motion for summary judgment
June 6	Reply memorandum of Plaintiff
June 28	Reply memorandum of Defendant
June 28	Supplemental affidavit of James F. Fitzpatrick in support of Plaintiffs' motion for summary judgment with exhibits
June 29	Hearing on Plaintiffs' motion for summary judgment and Defendant's cross-motion for summary judgment

Sept. 27	District Court Opinion denying Defendant's motion for summary judgment and granting Plaintiffs' motion for summary judgment (McGarraghy, J.)
Oct. 10	Defendant's motion for stay pending appeal
Oct. 13	Motion of First National City Bank to intervene as defendant
Oct. 13	Affidavit of Robert L. Hoguet, Jr., in support of First National City Bank's motion to intervene
Oct. 23	Plaintiffs' opposition to motion of First National City Bank to intervene
Oct. 24	Plaintiffs' opposition to motion for stay and to Defendant Saxon's proposed order
Nov. 9	Memorandum granting motion of First National City Bank to intervene and limiting it to the purpose of prosecuting an appeal from the judgment (McGarraghy, J.)
Nov. 9	Judgment of the District Court (McGarraghy, J.)
Nov. 9	Order staying judgment pending ultimate disposition of any appeal taken, provided the Comptroller shall not authorize any national banks to commence operation of a managing agency collective investment fund (McGaraghy, J.)
Nov. 21	Order granting motion of First National City Bank for leave to intervene as a party defendant (McGarraghy, J.)
1968	
Jan. 5	Notice of appeal by Intervenor from judgment of Nov. 9, 1967
Jan. 5	Notice of appeal by Defendant from judgment of Nov. 9, 1967

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT
Nos. 21,661, 21,662

Jul. 11	Order consolidating for the purpose of decision the instant case with the *National Association of Securities Dealers v. Securities & Exchange Commission*
Nov. 27	Hearing in Court of Appeals
1969	
June 21	Judgment of the Court of Appeals (Per curiam)
July 1	Opinions of the Court of Appeals (Bazelon, C. J.; Miller, Burger, JJ.)
Aug. 15	Order denying petition for rehearing
Nov. 6	Order denying motion for stay of mandate and ordering immediate issuance of mandate (Per curiam)

SUPREME COURT OF THE UNITED STATES
No. 843

Nov. 12	Petition for Writ of Certiorari filed
Nov. 18	Order staying mandate pending final disposition (Black, J.)
1970	
Mar. 23	Order granting Petition for Writ of Certiorari

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INVESTMENT COMPANY INSTITUTE
By Dorsey Richardson, Its President
61 Broadway
New York, New York

INVESTORS DIVERSIFIED SERVICES, INC.
Investors Building
Minneapolis, Minnesota

INVESTORS MANAGEMENT COMPANY, INC.
Westminster at Parker
Elizabeth 3, New Jersey

HUGH W. LONG & COMPANY, INC.
Westminster at Parker
Elizabeth 3, New Jersey

WELLINGTON MANAGEMENT COMPANY
1630 Locust Street
Philadelphia, Pennsylvania

WELLINGTON COMPANY, INC.
1630 Locust Street
Philadelphia, Pennsylvania,

Plaintiffs

v.

Civil Action No.
1083-66

JAMES J. SAXON
Comptroller of the Currency
Office of the Comptroller of
the Currency
Fifteenth and Pennsylvania Avenue
Washington, D.C.,

Defendant

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE AND OTHER RELIEF

(Filed April 25, 1966)

Plaintiffs, by their attorneys, bring this action against the above-named defendant and allege:

Jurisdiction and Venue

1. This is a civil action for a declaratory judgment and injunctive and other relief. It arises under Sections 16, 20, 21 and 32 of the National Banking Act of 1933, as amended, (herein referred to as "the Glass-Steagall Act"), codified in Sections 24, 377, 378 and 78, 12 U.S.C., respectively, as well as under Section 92(a), 12 U.S.C. This Court has jurisdiction under the provisions of 12 U.S.C. § 1331; the Declaratory Judgment Act, 28 U.S.C. § 2201-02; the Administrative Procedure Act, 5 U.S.C. § 1009; and the District of Columbia Code, Sections 11-305 and 11-306. Venue is established under the provisions of Section 1391(b) and 1391(e) (1), 28 U.S.C. There exists between each plaintiff and the defendant an actual controversy, justiciable in character, in respect of which plaintiffs require a determination of their rights by this Court. The amount in controversy exceeds $10,000.

Parties

2. Plaintiff Investment Company Institute (herein referred to as the "Institute") is an unincorporated association, having its principal place of business in the City, County and State of New York. At the time of the commencement of this action, Dorsey Richardson was the President thereof. It is a national association having as its members 174 open-end investment companies, and their 87 investment advisers and 78 principal underwriters. Open-end investment companies are commonly referred to, and will herein be referred to, as "mutual funds." The Institute is suing in a representative capacity for all its members which will be injured irreparably by the illegal acts here complained of. The great majority of its mutual fund members is engaged in the

business of issuing and offering for sale redeemable securities which represent an undivided interest in the portfolio of securities owned by the fund. Each mutual fund member is registered as an open-end investment company with the Securities and Exchange Commission (herein referred to as the "SEC") under the Investment Company Act of 1940 (herein referred to as "the 1940 Act"); and the securities issued by each member fund are registered with the SEC under the Securities Act of 1933 (herein referred to as "the 1933 Act"). Together, the mutual fund members of the Institute have assets of over $36 billion (being about 94% of the assets of all mutual funds in the United States) and have approximately 3.5 million shareholders. Each of the investment adviser members of plaintiff Institute is, pursuant to the contractual arrangements required by Section 15 of the 1940 Act, engaged in the business of regularly furnishing to one or more mutual fund members advice with respect to the desirability of investing in, purchasing, or selling securities, or is empowered to determine what securities shall be purchased or sold by such mutual fund. Each of the principal underwriter members of plaintiff Institute is, pursuant to the contractual arrangements required by Section 15 of the 1940 Act, engaged in the business of purchasing from one or more mutual fund members its securities for distribution or, as agent for such mutual fund, selling or having the right to sell the securities of such fund to a dealer or to the public or both.

3. (a) Plaintiff Investors Diversified Services, Inc., an Institute member, is incorporated under the laws of the State of Minnesota and has its office and principal place of business at Minneapolis, Minnesota. It acts as investment adviser and principal underwriter, pursuant to Section 15 of the 1940 Act, to the following open-end investment companies: Investors Mutual Inc.; Investors Stock Fund, Inc.; Investors Variable Payment Fund, Inc.; and Investors Selective Fund, Inc., all of which are Institute members. There are more than three-quarter million investors in these open-end investment companies residing throughout the United States.

Securities of each of these open-end companies are offered for sale and sold throughout the nation, and a substantial number of such shares are offered for sale and sold in the City and State of New York.

(b) Plaintiff Investors Management Company, Inc., is incorporated under the laws of the State of New Jersey and has its office and principal place of business at Elizabeth, New Jersey; plaintiff Hugh W. Long & Company, Inc., is incorporated under the laws of the State of Nevada and has its office and principal place of business at Elizabeth, New Jersey. Both are Institute members. Pursuant to Section 15 of the 1940 Act, Investors Management Company, Inc., acts as investment adviser, and Hugh Long & Company acts as principal underwriter, to the following open-end investment companies currently engaged in issuing and selling their shares, all of which are Institute members: Fundamental Investors, Inc.; Diversified Investment Fund, Inc.; and Diversified Growth Stock Fund, Inc. There are more than 250,000 investors in these open-end investment companies residing throughout the United States. Securities of each of these open-end companies are offered for sale and sold throughout the nation, and a substantial number of such shares are offered for sale and sold in the City and State of New York.

(c) Plaintiffs Wellington Management Company and Wellington Company, Inc., are both incorporated under the laws of the State of Delaware and have their offices and principal places of business at Philadelphia, Pennsylvania. Both are Institute members. Pursuant to Section 15 of the 1940 Act, Wellington Management, Inc., acts as investment adviser, and Wellington Company, Inc., acts as principal underwriter, to the following open-end investment companies currently engaged in issuing and selling their shares, both of which are Institute members: Wellington Fund, Inc., and Windsor Fund, Inc. There are more than 375,000 investors in these open-end investment companies residing throughout the United States. Securities of both of these open-end companies are offered for sale and sold through-

out the nation, and a substantial number of such shares are offered for sale and sold in the City and State of New York.

4. Defendant James J. Saxon is the Comptroller of the Currency (herein referred to as the "Comptroller") and is charged by law with administrative and regulatory authority with respect to national banks. His official residence is Washington, D. C. He is sued in his individual capacity as a result of certain acts here described which were taken in excess of his statutory authority.

5. The purpose of this action is to secure a declaratory judgment, with appropriate injunctive and other relief, that (i) those provisions of the Comptroller's Regulation 9, 12 C.F.R. § 9.18, which permit banks to establish and operate collective investment funds composed of monies deposited with the bank as managing agent (such collective investment funds herein referred to as "bank investment funds") which are functionally identical to mutual funds, and those actions of the Comptroller in approving the application of First National City Bank of New York, a national bank and member of the Federal Reserve System with its office and principal place of business in the City and State of New York (herein referred to as "the Bank"), to operate such a bank investment fund under these regulations, are unlawful inasmuch as they were taken by defendant Comptroller in excess of his statutory authority and in violation of Sections 16, 20, 21 and 32 of the Glass-Steagall Act which prohibit commercial banks from engaging in the securities business and (ii) that the approval of the Bank's plan is illegal and in excess of the Comptroller's statutory authority in that such approval permits activity which is prohibited by Section 92(a), 12 U.S.C.

Claim For Relief Based Upon Glass-Steagall Act

6. The Glass-Steagall Act, enacted in 1933 and amended in 1935, was enacted in substantial part to separate and divorce commercial banks from the securities business. Section 21 of the Act, a criminal section, prohibits

commercial banks from engaging in the business of issuing, underwriting, selling or distributing securities, with certain exceptions not relevant here. Section 16 provides that national banks cannot deal in equity securities, except for purchases and sales made solely upon the order and for the account of customers, and that national banks cannot underwrite any issue of securities. Section 32 prohibits officers and directors of member banks of the Federal Reserve System from serving in similar capacities with any enterprise primarily engaged in the issue, underwriting, sale or distribution of securities. Section 20 provides that no member bank shall be affiliated, as defined in the banking laws, with an organization principally engaged in the issue, flotation, underwriting, sale or distribution of securities. The Comptroller's regulations and action complained of here authorize activity in direct violation of these prohibitions and are thereby in excess of the Comptroller's statutory authority.

7. Upon information and belief, after one year following the passage of the Glass-Steagall Act, and to date, no bank has operated a bank investment fund. The Glass-Steagall prohibitions have consistently been administered to restrain mutual funds from creating interlocking relationships with commercial banks.

8. Prior to the effective date of the Glass-Steagall Act, plaintiff Investors Management Company, Inc., was a corporation organized under the laws of the State of New York and was a wholly-owned subsidiary of Irving Trust Company, a New York state bank and member of the Federal Reserve System. At that time Investors Management Company, Inc., was named Irving Investors Management Company, Inc., and, among other things, served as underwriter and investment adviser for Irving Investors Fund C, Inc., an investment fund operated in a manner virtually identical to the operation of present-day open-end investment companies. In consequence of the passage of the Glass-Steagall Act and rulings of the Federal Reserve Board made pursuant thereto, Irving Trust Company in 1934

divested itself of all of its interest in Irving Investors Management Company, Inc., and in Irving Investors Fund C, Inc. (the name of which was thereupon changed to Investors Fund C, Inc.), and thereafter Irving Trust Company had no further connection with the distribution of the shares of that fund or with the management thereof. In 1954, Investors Fund C, Inc., was merged into the aforesaid Fundamental Investors, Inc., and in 1964, plaintiff Investors Management Company, Inc., was reincorporated under the laws of the State of New Jersey.

9. Until 1962, the statutory authority to regulate the fiduciary activities of national banks was vested in the Federal Reserve Board. The Board consistently and diligently administered its authority until 1962 so as to prohibit any national or member bank from offering to its customers or to the public shares or participations in collective investment funds solely for investment purposes and not for bona fide fiduciary purposes.

10. In September, 1962 the statutory authority to regulate the fiduciary activities of national banks was transferred to the Comptroller of the Currency. 76 Stat. 668, 12 U.S.C. § 92(a). Assertedly pursuant to such authority, on February 4, 1963 the Comptroller issued a notice of proposed rule-making concerning the promulgation of revised rules which, in part, were intended to authorize the collective investment of funds contributed to the bank as managing agent solely for investment purposes, and not for bona fide fiduciary purposes. The Comptroller invited national banks and interested parties to submit comments pertaining to the proposed regulation. Plaintiff Institute, on behalf of its members, participated to the full degree permitted and submitted a statement in opposition to the proposed regulations because they permitted banks to enter the mutual fund business, asserting in part that such activity violated the Glass-Steagall Act. Final regulations were adopted by the Comptroller on April 5, 1963; such regulations were amended February 5, 1964.

11. These regulations permitted banks to create and operate bank investment funds which are the functional equivalents of the mutual fund members of plaintiff Institute and permitted banks, for the first time, to offer for sale securities in the form of participations in bank investment funds for the purpose of general investment. Under these regulations, a bank can pool the moneys of the investing public in a fund which will be invested in equity and other securities, and can operate and manage such fund. A bank investment fund will offer and issue participations to the investing public representing undivided shares in the collective account; these participations will be sold, distributed and underwritten exclusively by a bank and its employees. An investor in a bank investment fund will have the right to redeem his participation–*i.e.*, to draw out his share of the undivided assets in the fund in the form of cash based on net asset value of the participation. In all these particulars, the operation of a bank investment fund authorized by the Comptroller's regulations is indistinguishable in all material respects from the operation of the mutual fund members of plaintiff Institute. The activities of a bank and its employees in advising and managing a bank investment fund and in distributing, selling, and underwriting the participations in a bank investment fund are indistinguishable in all material respects to those of adviser and underwriter members of plaintiff Institute.

12. Pursuant to and under the provisions of such regulations, the Comptroller, on May 28, 1965, approved a plan to operate a bank investment fund submitted by the Bank. Such bank investment fund proposed by the Bank was labelled a "Collective Investment Account" (herein referred to as the "Account"). The Bank's Account will be operated as a bank investment fund essentially as described in paragraph 11. Under the Bank's plan as approved by the Comptroller, the Bank will promote its Account as part of its fiduciary activities, and Bank employees will sell, distribute, and underwrite the participations in the Account to the customers of the Bank and others who desire to invest in the Account.

13. The Bank has publicly announced that it intends to register its Account with the SEC as an open-end investment company under the 1940 Act in a manner similar to the registration of the mutual fund members of plaintiff Institute as open-end investment companies. The Bank on April 21, 1966, filed a registration statement with the SEC for the purpose of registering the participations in the Account as securities under the 1933 Act, in a manner similar to the registration of the securities issued by the mutual fund members of plaintiff Institute. The Comptroller has announced that he has encouraged and supported the Bank's plan to register its Account under the 1940 Act and the securities in the Account under the 1933 Act.

14. Notwithstanding the fact that the Bank, with the approval of the Comptroller, intends to register its Account with the SEC under the 1940 Act as an open-end investment company, the Federal Reserve Board, in a formal ruling, has erroneously held that the arrangement proposed by the Bank to operate a bank investment fund does not violate the prohibitions of Section 32 of the Glass-Steagall Act against interlocking relationships because, in its view, the Account is merely an arm or department of the bank. 30 Fed. Reg. 12836 (1965), adding 12 C.F.R. § 218.111. The said ruling does not refer to the legality of the Bank's plan under Sections 16 and 20 of the Glass-Steagall Act, and it explicitly states that the Federal Reserve Board "expressed no position with respect to whether" the proposed activity by the Bank, approved under the Comptroller's regulations here challenged, violates Section 21 of the Glass-Steagall Act.

15. The Bank intends to commence operation of its Account in the near future and commence offering for sale the participations in its Account to customers of the Bank and others. Similarly, other national banks have indicated that they plan to seek approval of plans under the Comptroller's regulations here challenged to permit them to operate bank investment funds. The Comptroller has stated

in violation of Sections 16, 20, 21 and 32 of the Glass-Steagall Act; and

(2) this Court declare that the Comptroller's approval of the Bank's plan to operate a bank investment fund under such regulations is illegal, in excess of his statutory authority, void, and of no effect inasmuch as it was made pursuant to regulations which are illegal under Sections 16, 20, 21 and 32 of the Glass-Steagall Act; and

(3) this Court declare that the Comptroller's approval of the Bank's proposed plan to operate its Account is illegal, in excess of his statutory authority, void, and of no effect, inasmuch as it permits activity which is not permitted by the provisions of Section 92(a), 12 U.S.C.; and

(4) this Court order that the Comptroller set aside any portion of Regulation 9 declared illegal pursuant to prayer (1) above and enjoin the Comptroller from authorizing any bank to operate bank investment funds under such regulations; and

(5) this Court enjoin the Comptroller from continuing in effect any prior approval to any bank, including his approval of the Bank's plan, which might have heretofore permitted the operation of bank investment funds under such illegal regulations, and to order that he set aside or rescind any such prior approval; and

(6) that the Court grant such other and further relief as may be appropriate.

/s/ G. Duane Vieth
/s/ James F. Fitzpatrick
/s/ Charles R. Halpern
1229 Nineteenth St., N.W.
Washington, D.C. 20036
Attorneys for Plaintiffs

OF COUNSEL:

Robert L. Augenblick, General Counsel
Investment Company Institute
61 Broadway
New York, New York 10006

Arnold & Porter
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

ANSWER

(Filed July 18, 1966)

Defendant, James J. Saxon, Comptroller of the Currency, by his undersigned attorneys, in answer to the complaint herein, admits, denies and alleges as follows:

1. Defendant admits the allegations contained in the first sentence of paragraph 1 of the complaint. Defendant denies the remaining allegations contained in paragraph 1 of the complaint, and refers the Court to the text of the various statutes cited in paragraph 1 of the complaint for the terms thereof.

2 and 3. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2 and 3 of the complaint, except that defendant denies the allegations that the acts of defendant are illegal and denies that plaintiff Institute or its members will be, are, or have been irreparably or otherwise injured.

4. Defendant denies the allegations contained in paragraph 4 of the complaint, except that he admits that he is the Comptroller of the Currency, that his official residence is

Washington, D.C., and refers the Court to the text of the National Bank Act, 12 U.S.C. 1 et seq., for the statutory authority of the Comptroller of the Currency.

5. Defendant denies the allegations contained in paragraph 5 of the complaint, except that defendant admits that on May 10, 1965, he gave specific approval under provisions of Section 9.18 (c) (5) of the Comptroller's regulations, 12 CFR 9.18(c) (5), to the establishment and operation of the Commingled Investment Account proposed by First National City Bank, and the Court is respectfully referred to the text of the Comptroller's Regulation 9, 12 CFR § 9 et. seq., and to the text of the various statutes cited in paragraph 5 of the complaint for the terms thereof.

6. Defendant denies the allegations contained in paragraph 6 of the complaint, except that defendant admits that the Glass-Steagall Act was enacted in 1933 and thereafter amended, and defendant refers the Court to the text of the various statutory provisions cited in paragraph 6 and to the text of the Comptroller's regulations for the terms thereof.

7 and 8. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7 and 8 of the complaint.

9. Defendant neither admits nor denies plaintiffs' paraphrasing of the Federal Reserve Act, 12 U.S.C. 248(k), as repealed and supplemented, 76 Stat. 668 et. seq., 12 U.S.C. 92a, contained in the first sentence of paragraph 9 of the complaint, but refers the Court to those sections for an exact statement of the terms and provisions thereof. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentence of paragraph 9 of the complaint.

10. Defendant neither admits nor denies plaintiffs' paraphrasing of the Federal Reserve Act, 12 U.S.C. 248(k), as

repealed and supplemented, 76 Stat. 668 et. seq., 12 U.S.C. 92a, contained in the first sentence of paragraph 10 of the complaint, but refers the Court to those sections for an exact statement of the terms and provisions thereof. Defendant denies the remaining allegations contained in paragraph 10 of the complaint, except that he admits that on January 31, 1963, he issued a notice of proposed rule making, published in the Federal Register at 28 F.R. 1111; that plaintiff Institute participated to the full degree permitted in the rule making proceedings and submitted a statement in opposition to the proposed regulations; that regulations were adopted by the Comptroller of the Currency on April 5, 1963, and published in the Federal Register at 28 F.R. 3309; and that the regulations were amended and the amendments published in the Federal Register at 29 F.R. 1719; and the Court is referred to the text of the notice for proposed rule making, the regulations as adopted and thereafter amended for the terms thereof and to the statement in opposition submitted by plaintiff Institute for the position asserted therein.

11. Defendant denies the allegations contained in paragraph 11 of the complaint, and refers the Court to the text of the Comptroller's Regulations 9, 12 CFR § 9 et seq., for the terms thereof.

12. Defendant denies the allegations contained in paragraph 12 of the complaint, except that he admits that on May 10, 1965, the Comptroller of the Currency gave specific approval under the provisions of the Comptroller's Regulation 9 to the establishment and operation of the Commingled Investment Account proposed by First National City Bank, and the Court is respectfully referred to the conditions of the specific approval granted by the Comptroller, the prospectus of the Commingled Investment Account filed with the Comptroller of the Currency by First National City Bank in connection with its request for the approval of such Account by the Comptroller of the Currency, and to applicable statutes and regulations for the manner of operation of said Account.

13. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 13 of the complaint. Defendant denies the remaining allegations contained in paragraph 13 of the complaint, except that he admits that on April 20, 1966, registration statements relating to the Commingled Investment Account were filed with the Securities and Exchange Commission and refers the Court to the text of the registration statements for the terms thereof; and that on August 25, 1965, the Office of the Comptroller of the Currency issued a statement supporting and approving the plans of First National City Bank to establish a commingled fund for agency accounts and refers the Court to the text of such statement.

14. Defendant denies the allegations contained in paragraph 14 of the complaint, except that he admits that the Federal Reserve Board issued a ruling dated September 29, 1965, and published in the Federal Register at 30 F.R. 12836, and the Court is referred to the text of said ruling for the terms thereof.

15. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 15 of the complaint, except that defendant admits that First National City Bank has commenced the operation of its Commingled Investment Account, and denies the allegations contained in the last sentence of paragraph 15 of the complaint.

16. Defendant denies the allegations contained in paragraph 16 of the complaint, and refers the Court to the text of the various statutes and regulations of the Comptroller of the Currency cited for the terms thereof.

17. Defendant denies the allegations contained in paragraph 17 of the complaint, and refers the Court to the text of the statutes cited for the terms thereof.

18. Defendant denies the allegations contained in paragraph 18 of the complaint, and specifically denies that there

exists in this action a justiciable case or controversy between plaintiffs and the defendant and further defendant specifically denies that plaintiffs have standing to maintain this action.

19. Defendant denies the allegations contained in paragraph 19 of the complaint.

20. Defendant denies each and every allegation of the complaint not herein admitted, qualified, or denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs lack standing to maintain this action.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

The complaint fails to allege the existence of a justiciable case or controversy.

FOURTH AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, having fully answered, the defendant, the Comptroller of the Currency of the United States, prays:

1. That the relief requested by the plaintiffs be denied and that the complaint be dismissed; and

2. That the defendant be given all such other and further relief as the Court may deem just and proper.

Respectfully submitted,

John W. Douglas
Assistant Attorney General

Harland F. Leathers

Irwin Goldbloom
Attorneys, Department of Justice
Washington, D.C. 20530

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
(Filed November 30, 1966)

Each of the plaintiffs moves the Court on the Complaint filed in this case, Plaintiffs' Statement of Material Facts as to which There is No Genuine Issue, and the Affidavits in support of plaintiffs' motion for summary judgment filed by Robert L. Augenblick, Joseph E. Welch, Stuart F. Silloway, John R. Haire, Adron P. Trantum and James F. Fitzpatrick, for summary judgment under Rule 56 of the Federal Rules of Civil Procedure and for the relief prayed for in the Complaint, on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law.

/s/ G. Duane Vieth
/s/ James F. Fitzpatrick
/s/ Charles R. Halpern
1229 – 19th Street, N.W.
Washington, D.C. 20036
Attorneys for Plaintiffs

Of Counsel:

ARNOLD & PORTER
1229 – 19th Street, N.W.
Washington, D.C. 20036

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Titled Omitted in Printing]

AFFIDAVIT OF ROBERT L. AUGENBLICK
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

STATE OF NEW YORK SS:

COUNTY OF NEW YORK

ROBERT L. AUGENBLICK, being first duly sworn, deposes and says as follows:

1. I am President and General Counsel of the Investment Company Institute (herein referred to as the "Institute"), a plaintiff in this suit. I submit this affidavit in support of plaintiffs' motion for summary judgment in this action.

2. The Institute is an unincorporated association, having its principal place of business in the City, County, and State of New York. At the time of the commencement of this action, Dorsey Richardson was the President thereof; on October 6, 1966, affiant became President thereof. The Institute is a national association, having as its members, as of October 1, 1966, 177 open-end management investment companies and their 88 investment advisers and 78 principal underwriters. Together, the open-end management investment companies which are members of the Institute have assets of about $32 billion, representing about 93 percent of the assets of all such companies in the United States, and have approximately 4 million shareholders.

3. Open-end management investment companies, as defined by the Investment Company Act of 1940, 15 U.S.C. §§ 80a-3–80a-4, are commonly referred to as "mutual funds". Virtually all mutual funds are engaged in the business of continuously issuing securities which represent an undivided interest in the fund's assets. Most mutual funds are corpo-

rate in form and the securities issued by them usually consist of capital stock. There are, however, a number of mutual funds in a variety of noncorporate forms, and the securities issued by some of them are variously denominated as "beneficial interests," "participating agreements," and the like. The proceeds from the sale of the securities issued by the fund are invested in a portfolio of securities of various kinds, in accordance with the stated investment policy of the particular fund. Some funds invest primarily in securities offering current income; others concentrate on long-term growth securities; still others specialize in particular industries or classes of securities; and many offer various combinations of objectives. The shareholder in a mutual fund is entitled at any time to redeem his interest, usually at net asset value, or in a few cases upon payment of a modest charge. To facilitate this redemption privilege, as well as to establish a price at which new shares are being offered, the value of a share in a mutual fund is calculated regularly, typically twice daily, on the basis of the market value of the securities held by the fund. This continuous process of redemption would restrict and contract the size of the mutual fund unless it continuously issued and offered new securities for sale. Virtually no shares in mutual funds are traded from one investor to another, and there is no significant trading market for such shares. In almost all cases, shareholders in mutual funds desiring to obtain cash for their shares redeem them with the issuing company.

4. The securities issued by most mutual funds are offered to the public at a price which includes a sales commission (or sales load). There are, in addition, a significant number of mutual funds whose shares are sold with no sales commission charged. Such funds are frequently called "no-load" mutual funds. The mutual fund members of the Institute include 23 "no-load" funds.

5. The activities of mutual funds are under the control of a board of directors or board of trustees. Directors and trustees are elected annually by the vote of a majority of the fund's outstanding voting securities. Mutual funds usu-

ally contract with an outside investment adviser for investment advice and other management services, and with a principal underwriter for the distribution of the fund's shares, pursuant to the statutory pattern established by the Investment Company Act of 1940, 15 U.S.C. § 80a-15, *et seq.*

6. The investment adviser of a mutual fund furnishes advice to the fund with respect to its investment portfolio and the securities it should buy, hold, and sell. In some cases, the adviser itself is empowered to purchase and sell securities for the fund. Typically, the investment adviser also furnishes other supervisory and administrative services to the mutual fund. The investment adviser receives compensation for its services, usually in the form of a fee based on the total value of the assets being managed. Plaintiffs, Investors Diversified Services, Inc., Investors Management Company, Inc., and Wellington Management Company, all serve as investment advisers to a number of mutual funds, and each of said plaintiffs and all the mutual funds they serve are members of the Institute.

7. The principal underwriter of a mutual fund is engaged in the business of selling and distributing the securities issued by the fund to the investing public through brokers or dealers, or directly through the underwriters' own salesmen, or both. The principal underwriter either purchases the securities issued by the fund for resale or acts as agent for the fund in distributing the securities. Except in the case of a no-load fund, the principal underwriter receives a fee for its services, usually in the form of a portion of the sales commission included in the selling price of the shares issued by the mutual fund. Plaintiffs, Investors Diversified Services, Inc., Hugh W. Long & Company, Inc., and Wellington Management Company, all serve as principal underwriters for a number of mutual funds, and all those plaintiffs and the mutual funds they serve are members of the Institute.

8. Each of the 177 mutual fund members of the Institute is registered with the Securities and Exchange Commis-

sion under the Investment Company Act of 1940. The activities of the mutual funds and their relationships with affiliated persons and others are all subject to detailed supervision and regulation under that Act. The investment advisers and principal underwriters for each mutual fund, including the investment advisers and principal underwriters who are plaintiffs herein, perform their services for the mutual funds they serve pursuant to contracts, the terms, execution and continuation of which are subject to the provisions of Section 15 of the Investment Company Act, 15 U.S.C. § 80a-15.

9. The securities issued by each of the mutual fund members of the Institute are registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933. All such securities are offered to the investing public by means of a prospectus which is initially filed with the Securities and Exchange Commission under the Securities Act as part of the registration statement for the securities to which the prospectus relates. See, for example, the following prospectuses for the sale of mutual fund shares:

Prospectus dated January 5, 1966 for Investors Mutual, Inc., one of the mutual funds for which plaintiff, Investors Diversified Services, Inc., acts as principal underwriter. (Exhibit 1).*

Prospectus dated April 1, 1966 for Fundamental Investors, Inc., one of the mutual funds for which plaintiff, Hugh W. Long & Company, Inc., acts as principal underwriter. (Exhibit 2).

Prospectus dated April 1, 1966, supplemented November 1, 1966, for Wellington Fund, Inc., one of the mutual funds for which plaintiff, Wellington Management Company, acts as principal underwriter. (Exhibit 3).

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*This Exhibit and all other Exhibits herein referred to are annexed to the Affidavit of James F. Fitzpatrick, filed in support of plaintiffs' motion for summary judgment in this action.

10. Since the passage of the Investment Company Act of 1940, the mutual fund business has enjoyed a period of substantial growth and active competition. During that period, the number of mutual fund members of the Institute has grown from 68 to 177, as of October 1, 1966; the number of shareholder accounts in mutual funds has grown from about 296,000 to 7,500,000; and the total investment by the public in such funds has grown from approximately $448,000,000 to $32,000,000,000. A broad variety of investment plans are available to the investing public, and the many mutual funds operating throughout the country are in vigorous competition. As of October 1, 1966, it is estimated that at least 1 million or about 25 percent, of the estimated 4 million mutual fund shareholders had holdings of $10,000 or more.

11. Prior to 1962, the statutory authority to regulate the fiduciary activities of national banks was vested in the Federal Reserve Board. Under its regulations and rulings, national banks were not permitted to operate a commingled fund as a general investment median. In September 1962, authority to regulate fiduciary activities was shifted to the Comptroller of the Currency, 76 Stat. 668, 12 U.S.C. § 92a. Shortly thereafter, the Comptroller issued a notice of proposed rule-making, concerning the promulgation of regulations which would permit banks to maintain collective investment funds as investment media and to offer shares in such funds to the public. In response to the Comptroller's invitation, the Institute submitted a statement opposing these regulations. On April 5, 1963, the Comptroller issued revised Regulation 9 effecting the proposed change. The regulation was amended by the Comptroller on January 31, 1964. 12 C.F.R. § 9.18.

12. On May 10, 1965, the Comptroller approved the plan submitted by First National City Bank of New York ("First National City") for the establishment and operation of a collective investment fund, called the Commingled Investment Account, under Regulation 9. On August 25,

1965, the Comptroller issued a statement that Regulation 9 would be amended to provide general authorization for other banks to establish funds similar to the fund created by First National City. At the time of the approval of First National City's plan, and to date, no state bank subject to the laws of the state of New York has operated a collective investment fund as a general investment medium.

13. On April 20, 1966, First National City registered its Commingled Investment Account with the Securities and Exchange Commission pursuant to the Investment Company Act as an open-end management investment company. On the same date, First National City filed a registration statement with the Securities and Exchange Commission pursuant to the Securities Act of 1933 for the purpose of registering the securities to be issued by its Commingled Investment Account. The registration statement concerning those securities became effective on June 14, 1966. Since then First National City has offered and sold to the investing public the securities issued by the Commingled Investment Account by means of the prospectus for First National City's Commingled Investment Account, dated June 14, 1966. (Exhibit 12).

14. By his promulgation of Regulation 9 and his approval of the plan submitted by First National City for its Commingled Investment Account, the Comptroller has authorized national banks to enter the securities business in direct unlawful competition with the mutual fund members of the Institute and in direct unlawful competition with their investment advisers and principal underwriters.

15. The Glass-Steagall Act of 1933 contained a number of provisions designed to separate commercial banking from the securities business, Ch. 89, 48 Stat. 162 (1933). The Federal Reserve Board has statutory authority to administer Section 32 of the Glass-Steagall Act, 48 Stat. 194 (1933), as amended, 49 Stat. 709 (1935), 12 U.S.C. § 78 (1964), which prohibits an officer, director, or employee of a national bank or other bank which is a member of the Federal

Reserve System from serving in a similar capacity in a company primarily engaged, among other things, in issuing stocks, bonds, or similar securities. The Federal Reserve Board has ruled on a number of occasions that mutual funds are primarily engaged in issuing securities within the meaning of Section 32 of the Glass-Steagall Act. Accordingly, the Board has on several occasions rejected requests by the Institute and by some mutual funds that bank officers or directors be permitted to serve on the board of directors of mutual funds.

16. The Bank-sponsored collective investment funds, which are permitted under Comptroller's Regulation 9, are virtually identical in function and structure to mutual funds. The SEC has recognized this and has insisted that all bank mutual funds must be registered under the Investment Company Act and that all participations in such funds must be registered as securities under the Securities Act of 1933. The Comptroller has sanctioned and encouraged such funds and such securities to be so registered with the Securities and Exchange Commission.

17. The collective investment funds authorized by Regulation 9, and exemplified by First National City's Commingled Investment Account, are identical to existing mutual funds in the following respects, among others: they are registered as open-end management investment companies with the Securities and Exchange Commission under the Investment Company Act; participations in them are registered as securities under the Securities Act of 1933; they are in the business of continuously issuing such securities; the proceeds of the sale of such securities are brought together and invested in the portfolio of securities owned by the fund.

18. The rights acquired by an investor in a bank-sponsored collective investment fund such as First National City's Commingled Investment Account are identical to the rights of an investor in a mutual fund in the following respects: the investor has an undivided interest in the fund's

portfolio of securities; the investor has the right to redeem his securities in the fund at any time, *i.e.*, to withdraw his share of the undivided assets in the fund in cash based on net asset values; investors annually elect a board of directors to oversee the affairs of the fund and, specifically, to decide whether the contract of the investment adviser should be renewed.

19. The potential customers who will be offered participations in a Bank-sponsored collective investment fund, including the potential investors in First National City's fund, are all potential customers for shares in the mutual funds issued by the mutual fund members and sold by the principal underwriter members, of the plaintiff Institute.

20. The large-scale entry of banks into the mutual fund business would have an adverse effect on what is now an efficient and highly competitive industry. Total sales volume for the year 1965 for all Institute members was approximately $4.4 billion. The distribution of these sales was such that no single mutual fund member of the Institute sold as much as 9 percent of the total. In New York State during the same year, Institute members sold approximately $567 million of mutual fund shares.

21. On information and belief, First National City has approximately 160 branches in New York City and the surrounding areas in New York State. Each such branch is an outlet for the securities issued by the Bank's Commingled Investment Account. Virtually every branch bank officer will be, in effect, a mutual fund salesman.

22. On information and belief, First National City is soliciting sales of participations in its Commingled Investment Account in New York State and elsewhere, in competition with members of the Institute, by mailing the Prospectus for its Commingled Investment Account (Exhibit 12) with a solicitation letter (Exhibit 14) to its customers.

23. Despite the prohibition contained in the Glass-Steagall Act of 1933, 48 Stat. 162, as amended, codified

in 12 U.S.C., other large banks in New York City and elsewhere will inevitably enter the mutual fund business, following the lead of First National City, unless the relief requested by plaintiffs is granted.

24. Institute members, in their attempts to sell the shares issued by the mutual fund members of the Institute, will be faced with increasing direct and unlawful competition from banks—competition which cannot fairly be met in the market-place since banks are in a position to use lists of their depositors and other customers to solicit sales. Such depositors and customers will daily be present in large numbers on the bank's premises to conduct banking business. Entry by banks into the mutual fund industry will, I believe, create unlawful competition and will result in substantial economic injury to the lawful business of the members of the Institute.

/s/ Robert L. Augenblick

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF JOHN R. HAIRE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

STATE OF NEW JERSEY
SS:
COUNTY OF UNION

JOHN R. HAIRE, being first duly sworn, deposes and says as follows:

1. I am a director of Investors Management Company, Inc., and a director of Hugh W. Long and Company, Inc.,

both plaintiffs in this action. I submit this affidavit in support of plaintiffs' motion for summary judgment herein.

2. Plaintiff Investors Management Company is incorporated under the laws of the State of New Jersey and has its office and principal place of business at Elizabeth, New Jersey. Plaintiff Hugh W. Long & Company is incorporated under the laws of the State of Nevada and has its office and principal place of business at Elizabeth, New Jersey. Pursuant to the requirements of Section 15 of the Investment Company Act of 1940, 15 U.S.C. § 80a-15, Investors Management Company acts as investment adviser, and Hugh W. Long & Company acts as principal underwriter, to the following open-end investment companies (hereinafter called "mutual funds"): Fundamental Investors, Inc.; Diversified Investment Fund, Inc.; and Diversified Growth Stock Fund, Inc. Investors Management Company, Hugh W. Long & Company, and each of the said mutual funds are members of the plaintiff Investment Company Institute.

3. Each of the said mutual funds is engaged in the business of continuously issuing and offering to the public redeemable securities which represent an undivided interest in the portfolio of securities owned by the fund. The activities of these funds are conducted, and their relationships to their principal underwriter and investment adviser are established, pursuant to the requirements of the Investment Company Act of 1940 under the jurisdiction of the Securities and Exchange Commission.

4. There are more than 250,000 investors in the said mutual funds. Securities of each fund are offered for sale and sold throughout the nation by independent broker-dealers who purchase such shares from Hugh W. Long and Company as principal underwriter. As of June 30, 1966, the total assets of the three funds were approximately $1,-510,000,000. During the first nine months of 1965, about 77.4 percent of the dollar volume of new sales were in amounts of $10,000 or more.

5. In 1965, shares of these three mutual funds having a total combined value of approximately $15,486,000 were sold in New York State. During the first six months of 1966, such total sales were approximately $8,900,000 in New York State.

6. As is set forth in detail in the Affidavit of Robert L. Augenblick, filed simultaneously herewith, the bank-operated collective investment funds authorized by Regulation 9 of the Comptroller of the Currency, and exemplified by the Collective Investment Account of First National City Bank of New York, are virtually identical in function and structure to mutual funds of the type which Investors Management Company and Hugh W. Long & Company serve. By permitting national banks to establish and operate such funds, and permitting such banks and their employees to offer and sell the securities issued by them, the Comptroller has permitted banks to enter the securities business in direct, unlawful competition with existing mutual funds and their investment advisers and principal underwriters, including Investors Management Company, Hugh W. Long & Company, and the mutual funds they serve. Moreover, by authorizing First National City Bank of New York to create its Collective Investment Account, and to offer and sell securities issued by such Account in the City and State of New York, the Comptroller has permitted that Bank and its Account to engage in direct, unlawful competition in that City and State with Investors Management Company, Hugh W. Long & Company, and the mutual funds they serve. The direct, unlawful competition authorized by the Comptroller's regulations and subsequent rulings will adversely affect the business of Investors Management Company, and Hugh W. Long & Company, in the City and State of New York and throughout the country.

/s/ John R. Haire

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF JOSEPH E. WELCH IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

STATE OF PENNSYLVANIA
SS:
COUNTY OF PHILADELPHIA

JOSEPH E. WELCH, being first duly sworn, deposes and says as follows:

1. I am President of Wellington Management Company, a plaintiff in this action. On October 31, 1966 Wellington Company, Inc., which was also a plaintiff in this Action, was merged into Wellington Management Company. I submit this affidavit in support of plaintiffs' motion for summary judgment herein.

2. Plaintiff Wellington Management Company is incorporated under the laws of the State of Delaware and has its office and principal place of business at Philadelphia, Pennsylvania. Pursuant to the requirements of Section 15 of the Investment Company Act of 1940, 54 Stat. 812, 15 U.S.C. Sec. 80a-15, Wellington Management Company acts as investment adviser and principal underwriter, to the following open-end investment companies (hereinafter called "mutual funds"): Wellington Fund, Inc. and Windsor Fund, Wellington Management Company and each of the said Mutual funds are members of the plaintiff Investment Company Institute.

3. Each of the said mutual funds is engaged in the business of continuously issuing and offering to the public redeemable securities which represent an undivided interest in the portfolio of securities owned by the fund. The activities of these funds are conducted, and their relationships to their principal underwriter and investment adviser are

established, pursuant to the requirements of the Investment Company Act of 1940 under the jurisdiction of the Securities and Exchange Commission.

4. There are more than 375,000 investors, residing throughout the United States, in the said mutual funds. Securities of each fund are offered for sale and sold throughout the nation. As of June 30, 1966, the total assets of the two mutual funds were approximately $2,017,000,000. During February, 1966, about 56.5 percent of the dollar volume of new sales were in amounts of $10,000 or more.

5. In 1965, shares of the said mutual funds having a total combined value of approximately $24,990,000 were sold in New York State. During the first six months of 1966, such total sales were approximately $8,691,000 in New York State.

6. As is set forth in detail in the Affidavit of Robert L. Augenblick, filed simultaneously herewith, the bank-operated collective investment funds authorized by Regulation 9 of the Comptroller of the Currency, and exemplified by the Collective Investment Account of First National City Bank of New York, are virtually identical in function and structure to the Wellington Fund and Windsor Fund. By permitting national banks to establish and operate such funds and permitting such banks and their employees to offer and sell the securities issued by them, the Comptroller has permitted banks to enter the securities business in direct unlawful competition with existing mutual funds and their investment advisers and principal underwriters, including Wellington Management Company, and the mutual funds it serves. Moreover, by authorizing First National City Bank of New York to create its Collective Investment Account, and to offer and sell securities issued by such Account in the City and State of New York, the Comptroller has permitted that Bank and its Account to engage in direct unlawful competition in that City and State with Wellington Management Company and the mutual funds it serves. The direct unlawful competition authorized by the Comptroller's regulations and his subsequent rulings will adversely affect the

business of Wellington Management Company in the City and State of New York and throughout the country.

/s/ Joseph E. Welch

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF STUART F. SILLOWAY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

STATE OF MINNESOTA
SS:
COUNTY OF HENNEPIN

STUART F. SILLOWAY, being first duly sworn, deposes and says as follows:

1. I am President and a director of Investors Diversified Services, Inc. ("IDS"), a plaintiff in this action. I submit this affidavit in support of plaintiffs' motion for summary judgment herein.

2. IDS is incorporated under the laws of the State of Minnesota and has its office and principal place of business at Minneapolis, Minnesota. It acts as investment adviser and principal underwriter, pursuant to the requirements of Section 15 of the Investment Company Act of 1940, 15 U.S.C. § 80a-15, to the following open-end investment companies (hereinafter called "mutual funds"): Investors Mutual, Inc; Investors Stock Fund, Inc.; Investors Variable Payment Fund, Inc.; and Investors Selective Fund, Inc. IDS and each of the said mutual funds are members of the plaintiff Investment Company Institute.

3. Each of the said mutual funds is engaged in the business of continuously issuing and offering to the public redeemable securities which represent an undivided interest in the portfolio of securities owned by the fund. The activities of these mutual funds are conducted, and their relationships to IDS as principal underwriter and investment adviser are established, pursuant to the requirements of the Investment Company Act under the jurisdiction of the Securities and Exchange Commission.

4. There are more than three-quarter million investors, residing throughout the United States, in the mutual funds served by IDS. Securities of each fund are offered for sale and sold throughout the nation. As of June 30, 1966, the total assets of the four mutual funds were approximately $5,173,000,000. During 1965 about 46.3 percent of the dollar volume from new customers were in amounts of $10,000 or more.

5. In 1965, shares of the four mutual funds served by IDS having a total combined value of approximately $24,-187,000 were sold by IDS in New York State. During the first six months of 1966, such sales totaled approximately $18,218,000 in New York State.

6. As is set forth in detail in the Affidavit of Robert L. Augenblick, filed simultaneously herewith, the bank-operated collective investment funds authorized by Regulation 9 of the Comptroller of the Currency, and exemplified by the Collective Investment Account of First National City Bank of New York, are virtually identical in function and structure to mutual funds of the type which IDS serves and the shares of which IDS sells. By permitting national banks to establish and operate such funds, and permitting such banks and their employees to offer and sell the securities issued by them, the Comptroller has permitted banks to enter the securities business in direct unlawful competition with existing mutual funds and their investment advisers and principal underwriters, including IDS and the four mutual funds it serves. Furthermore, by specifically authorizing

First National City Bank of New York to establish and operate its Collective Investment Account and to offer and sell securities issued by such Account in the City and State of New York, the Comptroller has permitted that Bank to engage in direct unlawful competition in that City and State with IDS and the four mutual funds it serves. The direct unlawful competition authorized by the challenged regulation and subsequent actions of the Comptroller will adversely affect the sale by IDS of the shares issued by the four mutual funds it serves in the City and State of New York and throughout the country.

/s/ Stuart F. Silloway

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF ADRON P. TRANTUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

STATE OF NEW JERSEY
SS:
COUNTY OF UNION

ADRON P. TRANTUM, being first duly sworn, deposes and says as follows:

1. I am Senior Vice President of Investors Management Company, Inc., a plaintiff in the above-entitled action. I submit this affidavit in support of plaintiffs' motion for summary judgment herein.

2. Investors Management Company throughout its history has had several changes in its corporate name and has been reincorporated on several occasions. I have been employed

by the company under its various names since September 18, 1929.

3. On June 16, 1934, the date on which the provisions fo the Glass-Steagall Act, 48 Stat. 184, 12 U.S.C. § 78, became effective, plaintiff Investors Management Company, Inc. was named Irving Investors Management Company, Inc., and was a wholly-owned subsidiary of Irving Trust Company, a bank chartered by the State of New York and a member of the Federal Reserve System. Irving Investors Management Company was then engaged in the business of providing services to investment companies. Among its activities, it served as underwriter and investment adviser to Irving Investors Fund C, Inc.

4. Irving Investors Fund C, Inc. was a corporation of a type similar to that generally classified today as an open-end investment company or mutual fund. It issued to investors shares representing an undivided interest in a pool of securities. The investor could redeem such shares at any time based on the net asset value of his shares at the time of redemption. A substantial number of the shares in this fund had been offered and sold to the customers of Irving Trust Company by the bank and its officers.

5. In October, 1934, Irving Trust Company divested itself of the capital stock of its wholly-owned subsidiary, Irving Investors Management Company, and thereby also disposed of its entire interest in Irving Investors Fund C. Thereafter, Irving Trust Company had no further connection with the distribution of the shares of that fund or with the management thereof. In a letter dated October 5, 1934, Robert C. Effinger, President of Irving Investors Management Company, announced to the participants in several funds, including Irving Investors Fund C, that this decision of Irving Trust Company had been made "(i)n consequence of certain provisions of the Banking Act of 1933 and recent rulings of the Federal Reserve Board made pursuant thereto . . ." A true copy of said letter is attached hereto as Appendix A.

6. After divestiture by Irving Trust Company, the corporate name of Irving Investors Management Company, Inc. was changed on several occasions and the company was reincorporated several times. Its present name is Investors Management Company, Inc., and it is now incorporated under the laws of the State of New Jersey.

7. On December 17, 1934, the name of Irving Investors Fund C, Inc. was changed to Investors Fund C, Inc. In 1954 Investors Fund C, Inc. was merged into Fundamental Investors, Inc., one of the mutual funds for which Investors Management Company, Inc. now serves as investment adviser.

/s/ Adron P. Trantum

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF JAMES F. FITZPATRICK IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed November 30, 1966)

THE DISTRICT OF COLUMBIA SS:

JAMES F. FITZPATRICK, being first duly sworn, deposes and says as follows:

That annexed to this affidavit are true and correct copies of the following documents:

Exhibit 1. Prospectus for Investors Mutual, Inc., dated January 5, 1966.

Exhibit 2. Prospectus for Fundamental Investors, Inc., dated April 1, 1966.

Exhibit 3. Prospectus for Wellington Fund, Inc., dated April 1, 1966, supplemented November 1, 1966.

Exhibit 4. Statement of the Comptroller of the Currency, dated August 25, 1965.

Exhibit 5. Notification of Registration filed by Commingled Investment Account of First National City Bank with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, including Exhibit No. 1 thereto.

Exhibit 6. Registration Statement of Commingled Investment Account of First National City Bank (Form N-8B-1), filed with the Securities and Exchange Commission April 20, 1966, which incorporated exhibits, including the documents designated Exhibits 7, 8, 9, and 10, described immediately hereafter.

Exhibit 7. Specimen of Participant's Certificate issued upon admission to First National City's Account (filed as Exhibit 4(a) to the Account's Registration Statement under the Investment Company Act and as Exhibit C-1 to the Account's Registration Statement under the Securities Act of 1933, Form S-5).

Exhibit 8. Specimen of Participant's Certificate upon partial termination of participation in First National City's Account (filed as Exhibit 4(b) to the Account's Registration Statement under the Investment Company Act and as Exhibit C-2 to the Account's Registration Statement under the Securities Act of 1933, Form S-5).

Exhibit 9. Management agreement between the Account and First National City Bank (filed as Exhibit 5 to Account's Registration Statement under the Investment Company Act and as Exhibit D to the Account's Registration Statement under the Securities Act of 1933, Form S-5).

Exhibit 10. Underwriting agreement between Account and First National City Bank (filed as Exhibit 6 of the Account's Registration Statement under the Investment Company Act and as Exhibit E to the Account's Registration Statement under the Securities Act of 1933, Form S-5).

Exhibit 11. Amendment No. 1 to Registration Statement, under the Investment Company Act, of Commingled Investment Account of First National City Bank, filed May 23, 1966.

Exhibit 12. Prospectus for Commingled Investment Account of First National City Bank, dated June 14, 1966.

Exhibit 13. Notice of Annual Meeting of Participants and Proxy Statement for Commingled Investment Account of First National City Bank, dated October 14, 1966.

Exhibit 14. Solicitation letter of First National City Bank for participation in Commingled Investment Account undated.

/s/ James F. Fitzpatrick

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[Exhibit 1 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

FILED
NOV 30 1966
ROBERT M. STEARNS, CLERK

PROSPECTUS / January 5, 1966

Investors Mutual, Inc. is a mutual investment fund, with net assets now in excess of $2,900,000,000, invested in a prudently selected, diversified portfolio of securities, balanced among bonds, common stocks and preferred stocks.

Shares of the Company are distributed by Investors Diversified Services, Inc., organizer and investment manager of the Company. This firm, founded in 1894, now manages over $5,500,000,000 in market value of investment securities for investment companies whose securities are held by more than 900,000 investors.

The shares are offered to the public at their net asset value, ordinarily determined daily, plus a maximum sales charge of 8% of the public offering price. The sales charge is reduced on a graduated scale for sales involving large amounts as more fully described in numbered section 14 of this prospectus. Asset value varies with the fluctuations in the market value of the securities owned by the Company.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

SERIES AA

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Investors Mutual, Inc. does not authorize or assume responsibility for any information or representations regarding Investors Mutual, Inc. other than those contained in this prospectus, or in any supplement thereto, or in any supplemental sales material authorized by the Company for use in connection with the sale of its stock.

INVESTORS MUTUAL, INC.

MINNEAPOLIS MINNESOTA

About the Prospectus

This Prospectus has been prepared to give you the material facts about Investors Mutual, Inc., so that you can intelligently decide whether or not an investment in this Company is the kind which will best fit your investment needs.

In these pages you will find facts and figures concerning the Company; its operating results; its investment restrictions and policies; and the rights and privileges of its shareholders. *WE URGE YOU TO READ IT CAREFULLY.*

1 Investors Mutual—What Is It?

Investors Mutual, Inc. is a company which invests its money primarily in the securities of American enterprises. In other words, it is an investment company or, as it is sometimes known in investment terms, a "mutual fund." Its purpose is to provide persons having varying amounts of money to invest, with a way to combine their investment funds and, through the medium of one security, share in the business of a large number of companies within different industries.

Because it invests not only in the common stock of such companies but also in preferred stocks and bonds, it is known as a "balanced mutual fund."

These investments are *not* fixed. As explained later, they are chosen, supervised and changed on the recommendation of Investors Diversified Services, Inc. This company is, by contract, the investment manager of the fund.

2 Investment Management

Investors Diversified Services, Inc., the Fund's organizer, sponsor and investment manager, was established in 1894. It manages investments for five open-end investment companies, for its own account, and for the accounts of its subsidiary companies. It has a large staff of investment specialists with many years of experience in investment management. It maintains extensive facilities for financial and economic research and analysis. Analysts trained in specialized fields (such as public utilities, railroads, oils, chemicals, etc.) are continually studying and evaluating the companies in which investments are made or contemplated. Visits to production and operating centers of these companies and "on the spot" talks with their managers are part of the system upon which the analysts base their reports and recommendations.

Shareholders of Investors Mutual, Inc. have the benefit of these comprehensive management services. Whether a person has enough money to buy a few or many securities, he very probably does not have

the time, experience and knowledge necessary to decide properly which securities are best to buy, when to buy or sell them, and at what prices. Seasoned investment management helps to solve this perplexing problem by supplying the services of an organization of trained and skilled specialists who make investments their life work and devote full time to dealing with the many aspects involved in the investment of money. By pooling the funds of many thousands of investors throughout the nation, the Company is able to provide the average investor, on a reasonable basis, with services and facilities which at one time only wealthy investors and large estates could afford. These services are paid for by a management fee to Investors Diversified Services, Inc. as set forth in section 18.

Allocation of Brokerage on Fund Portfolio Transactions

Investors Diversified Services, Inc., the Company's investment manager, now manages over $5,500,000,000 in market value of investment securities for the investment companies whose securities it distributes, including Investors Mutual, Inc. This large scale operation permits the investment manager, in connection with portfolio transactions of the fund companies handled through brokers, to obtain the maximum in the way of the services and facilities offered by leading investment brokerage houses. The investment manager normally places purchase and sale orders for most New York Stock Exchange common stocks through one member house (Scheffmeyer & Co.) which receives a fixed fee payable out of aggregate commissions. This firm distributes brokerage commissions to a large number of member firms (currently around 50 firms), in a fashion designed to obtain the best price and execution, as directed by the investment manager in a manner which seeks to give recognition to those member firms which are capable of rendering services and which, over time, do provide services to the investment manager over and above the bare brokerage function although this is not an absolute standard since some business may be distributed solely on the basis of the best business judgment of the investment manag The distribution of such brokerage business is det mined from time to time by the investment manag and reviewed by the Board of Directors of the Fu The distribution is made with a view to obtain the maximum usefulness from the firms handli portfolio transactions. Such services may be in ter of contributions made by such firms' research st in supplementing, aiding, or otherwise helping the m search activities of the investment manager, referra of direct placements, wire services, quotations, st tistical and economic data and reports, and other se vices which large brokerage houses can and do rend to important buyers and sellers of securities witho extra charge. The only compensation paid these bro ers is the prescribed brokerage commissions for s such stock exchange transactions which would have be paid by the funds in any event. Brokerage comm sions paid by the Fund totaled $2,319,940 for t fiscal year ended September 30, 1965.

The Fund's investment manager has organized subsidiary corporation, IDS Securities Corporat ("IDSS") for the purpose of engaging in the brok age business. Effective August 31, 1965 IDSS w admitted as a member firm of the Pacific Coast Sto Exchange. As a member of that exchange, IDSS re ceives brokerage from transactions executed on t exchange. Use of the services of IDSS by the Fu must be consistent with the objective of obtain best price and execution. The Fund's investment ma ager has confirmed to the Fund that an amount eq to any net profit which IDSS may realize from tra actions attributable to the Fund from all sources w be credited to the Fund, not less often than annual as a reduction of the amounts otherwise due to In vestors Diversified Services, Inc. under the investm advisory and services agreement between it and t Fund. A net profit of $55,053 attributable to trans tions of the Fund was realized during the three mo ended November 30, 1965. No representation is ma that any future benefit which may accrue to the Fu from such reduction will be significant from the st point of any individual Fund investor.

3 Condensed Financial Information

PER SHARE INCOME AND CAPITAL CHANGES
(for a share outstanding throughout the years)

(Adjusted for 2-for-1 stock split on April 26, 1956)

Fiscal years ended September 30	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965
Income and Expense										
Income	$.40¾	$.41	$.41¾	$.41	$.42¼	$.43	$.44½	$.44¼	$.45¾	$.47½
Operating expenses	.05	.04¾	.04¾	.05½	.05¼	.06	.06	.05½	.05⅛	.04⅜
Net income	.35¾	.36¼	.37	.35½	.37	.37	.38½	.38¾	.40⅜	.42⅜
Dividends from net income	.35¾	.36½	.36½	.35½	.36¾	.37¼	.38¼	.39	.40⅜	.42⅜
Capital Changes										
Net asset value at beginning of period	$9.08	$9.11	$8.55	$9.72	$10.18	$10.00	$11.58	$9.95	$11.35	$12.22
Net realized and unrealized profits (or losses) on securities	.18½	(.48)	1.28¾	.68¾	(.10½)	1.74¾	(1.28¼)	1.60¼	1.11⅛	.32¾
Distributions from realized capital gains	.15½	.07¾	.12¼	.22¾	.07¾	.16½	.35	.20	.24⅛	.28¾
Net asset value at end of period	9.11	8.55	9.72	10.18	10.00	11.58	9.95	11.35	12.22	12.26
Ratio of operating expenses to average net assets	0.54%	0.54%	0.54%	0.53%	0.53%	0.54%	0.52%	0.50%	0.44%	0.38%
Ratio of net income to average net assets	3.87%	4.03%	4.13%	3.40%	3.62%	3.34%	3.45%	3.53%	3.44%	3.50%
Number of shares outstanding at end of period (000 omitted)	104,715	116,590	125,301	138,565	150,448	159,255	172,740	191,987	214,535	239,927

4 Investment Objectives and Policies

Objectives sought by the Company are: (1) to provide a reasonable return on its shareholders' investments; (2) to preserve the value of these investments; (3) to aim at long-term appreciation possibilities on an investment rather than a speculative basis.

Because virtually all securities fluctuate in market price and corporate earnings and dividends vary from year to year, it is impossible for the Company to assure its shareholders that these objectives can be realized at all times. However, to attain them, the management exerts every effort to maintain a *balanced portfolio* by varying the proportions of bonds, preferred stocks and common stocks which are appraised in the light of security values and long-term economic trends. Under certain conditions a major portion of the Company's assets may be invested in equity securities such as common stocks. And there may be times when the Company will assume a defensive position by investing a large part in securities such as fixed interest-bearing bonds and preferred stocks with established dividend rates. The present intention of the management is that generally the Company will have not more than 75% of its investments in common stocks and not less than 25% in bonds, preferred stocks and short term notes.

At September 30, 1965, investments, taken at market value, were distributed as follows: short term notes 2.30%, bonds 27.19%, preferred stocks 6.70% and common stocks 63.81%.

Investments are not concentrated in any one in-

dustry or group of industries but are varied according to what is judged advantageous under different economic conditions. The portfolio is *diversified* by investments in a cross section of business and industry and frequently numerous companies within an industry, in an effort to reflect a representative pattern of American enterprise. Thus this "balance" of investments, plus the broad diversification, tends to reduce the risk of market fluctuation and to provide a reasonably reliable source of income for shareholders. The Company does not intend to act as underwriter, invest in real estate, purchase and sell commodities or commodity contracts, make loans to other persons (except by the purchase and sale of securities), invest in companies for the purpose of exercising control or management, or borrow money except for extraordinary or emergency purposes. The policies stated in this last sentence may not be changed without a vote of the shareholders. It plans to select securities for its investment portfolio which in the opinion of the management may profitably be retained on a long-term basis. However, in order to preserve the full benefit of managerial judgment, the Company reserves freedom of action with respect to portfolio turnover and may sell any security regardless of the length of time it may have been held. The Company does not engage in short term trading as such.

5 Dividends and Capital Gains Distributions

The Company was organized in January, 1940 and since December 31st of that year it has paid a quarterly dividend to its shareholders. On September 29, 1965 the Company declared its 100th consecutive quarterly dividend. Its income has varied in amount and as a result the amount of dividends paid to its shareholders has varied. See section 3.

The Company presently intends to continue its policy of distributing, as dividends to shareholders in each year, substantially all of its investment income less operating expenses. Dividend checks are ordinarily mailed to reach shareholders about the 14th of January, April, July and October. These dividends are payable to shareholders of record on or about the last business day of the previous month. The fiscal year-end dividend will be augmented by distributions from realized capital gains when available.

A regulated investment company which meets certain diversification of assets and source of income requirements (prescribed by the internal revenue code) is accorded conduit or "pass through" treatment if it distributes to its shareholders at least 90 per cent of its taxable income (exclusive of net long-term capital gain); i.e., it will be taxed only on the portion of such income which is retained. A shareholder receiving a distribution of such income from a regulated investment company treats it as a receipt of ordinary income in the computation of his gross income for federal tax purposes and not a shareholder is eligible to include it in computing the dividend received exclusion and the intercorporate dividend deduction.

As to capital gains distributions, to the extent that a regulated investment company distributes the excess of net long-term capital gain over its net short term capital loss, such capital gain is not taxable to the company but is taxable to the shareholder as a long-term capital gain. Such capital gains distributions do not qualify for the computation of the dividend received exclusion or the intercorporate dividend deduction.

Approximately 24% of the net asset value of the shares of Investors Mutual, Inc., as of September 30, 1965 represents unrealized appreciation. Net gain on the sale of securities when realized and distributed (actually or constructively) is taxable for federal income tax purposes as capital gain. If the net asset value of shares were reduced below a shareholder's cost by such a distribution it would be a return of investment though taxable as stated above.

6 Features of the Investment

(a) NATURE OF INVESTMENT

Investors Mutual, Inc. is a mutual, open-end, diversified, management investment company owned by its shareholders. Each share represents a pro-rata interest in the assets of the Company. The Company has only one class of stock. All shares are transferable, have equal rights and are redeemable as explained in section 16. As of September 30, 1965, there were 239,926,645 shares outstanding owned by 429,985 shareholders.

(b) DIVERSIFICATION

Diversification is considered a basic virtue of an investment company because it tends to reduce inherent market risks by spreading investments among many carefully selected securities. In operating the Company as a "balanced" fund, and in line with its current appraisals of economic conditions, the management intends to invest its assets in varied proportions of bonds, preferred stocks and common stocks, with not more than 75% in common stocks.

Within such general classification of types of securities, the Company intends to diversify its investments in the following manner:

(1) Diversification as to types of enterprises.

(2) Diversification as to individual companies within these enterprises.

(3) Geographical diversification.

The list of investments starting on page 29 illustrates how this policy of diversification is currently applied by the Company.

(c) FLUCTUATION OF ASSET VALUE

The asset value of the shares varies with the daily market value of the securities owned by the Company and may be more or less than the investor's cost. As explained in sections 14 and 16, the shares are ordinarily redeemable at asset value, and are sold at asset value plus a maximum distribution charge of 8% of offering price.

7 Privileges Extended to Shareholders

(a) DIVIDENDS AND CAPITAL GAINS REINVESTED

The Company at the present time offers its shareholders the privilege of reinvesting the dividends or capital gains distributions they receive on their shares in additional shares of the Company, without paying another sales charge. See section 9.

(b) MARKETABILITY

Under ordinary circumstances, shares may be redeemed for cash at any time. Any shareholder may turn in his shares to the Company and receive the asset value per share (which may be more or less than his cost) calculated at the close of business on the first full business day upon which the Company receives the holder's endorsed stock certificate and written request for redemption of his shares. This privilege (and certain limitations thereon) is more fully explained in section 16.

(c) INVESTMENTS IN FUNDS INTERCHANGEABLE

Perhaps sometime in the future a shareholder may want to change his investment in Investors Mutual, Inc. to shares in another type of fund. Under the present policy of the Company, as discussed later in section 12, he is privileged to transfer his investment at net asset value to investments in shares of Investors Stock Fund, Inc., Investors Selective Fund, Inc. or Investors Variable Payment Fund, Inc., and he does not have to pay a sales charge for this service.

8 Systematic Investment Plan

Provision is made for a simple means of accumulating shares systematically through the Company's "Systematic Investment Plan." Under this plan, the investor makes an initial cash investment, followed at regular intervals by further payments in convenient amounts. With each additional payment, additional shares, the number of which is determined by the then public offering price, are purchased for his account. The investor may decide whether to make these purchases monthly, quarterly or at any other stated interval and may discontinue payments at any time without penalty. All dividends and capital gains distributions received on shares may be reinvested without sales charge towards the accumulation of more shares (see section 9). The Fund reserves the right to discontinue or alter the plan at any time.

This plan of purchase is simply a designation by the applicant of the times at which he intends to make further investments in shares of Investors Mutual, Inc. He is not obligated or required to make any single purchase pursuant to his expressed intention. By adopting a plan, however, he establishes for himself a program by which he proposes to acquire at stated intervals as many shares of the Fund as each payment when made will then purchase at the then public offering price.

The plan contemplates the regular investment at fixed periods of an equal number of dollars in the shares of the Fund. Since the shares fluctuate in value this investment of an equal number of dollars has the effect of causing the investor to buy more shares when prices are low and fewer shares when they are high. The investor will, of course, incur a loss if he discontinues his plan and redeems his shares when the market value of his shares is [illegible] than his cost thereof. Accordingly, in selecting [illegible] plan he should take into consideration his financial ability to continue the plan through periods of [illegible] security market price levels. He must also realize that the plan of itself does not assure a profit or protect against loss of value in declining markets.

The plan is not an option, warrant or right to purchase additional shares and each payment for investment under the declared plan is a separate application subject in each instance to acceptance or rejection by the issuer. As shares are acquired under the plan, the purchaser becomes entitled to all rights of a shareholder upon the shares he has purchased as of the date his original payment and each subsequent payment are received and accepted by the Company. As each payment is made and accepted the Company gives the shareholder the proper credit for all of his shares or fractional shares so acquired upon its books of record. No certificate will be issued until the registered shareholder asks for it or the Company at its own election issues a certificate. In either case, the Company may include in such certificate the entire number of shares owned by the shareholder. Shares purchased pursuant to the plan are identical with all other shares of the Company (whether or not a certificate has been issued for them) and have all rights, including dividend, liquidation and redemption rights. The shares are fully paid outstanding shares or fractional shares. All of any part of the shares acquired under the plan, whether or not a certificate has been issued therefor, may be redeemed at any time by the owner as explained in section 16.

9 Dividend Reinvestment Plan

Any shareholder may, by means of his written authorization, appoint Investors Diversified Services, Inc. (IDS) as his agent to receive cash dividends paid by the Company on his shares and to reinvest them for him in more shares of the Company at their asset value. No additional charge is made for this service. His authorization for this agency becomes effective as soon as it is received by IDS at its offices in Minneapolis, Minnesota. Only those dividends declared after receipt of this authorization will be reinvested. Distributions of securities profits may be reinvested separately at net asset value (see section 7(a)).

He may cancel his authorization at any time by notifying IDS, in writing, that he no longer wants it to act as his dividend reinvestment agent. Upon receipt of his letter, his agreement will be ended, unless the notice is received between a dividend record date and a dividend payment date. In that case, the termination will become effective immediately following the next dividend payment date after the notification is received. IDS reserves the right to terminate the agency at any time by written notice to the shareholder.

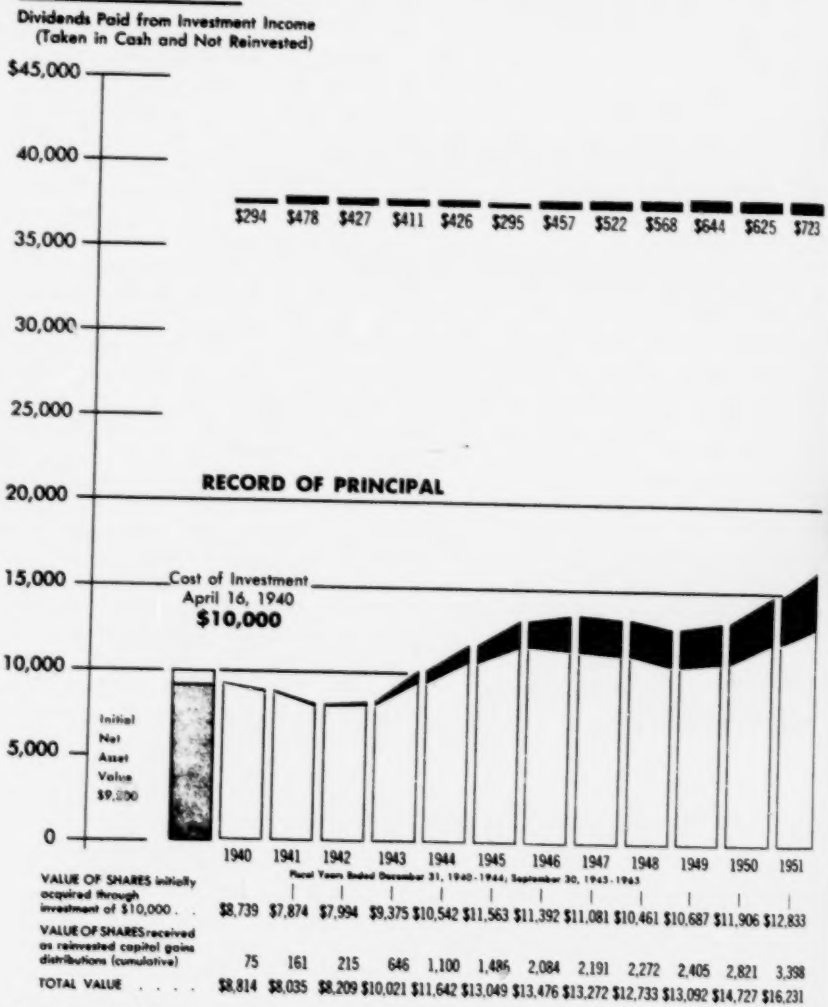
Any dividends or distributions received by an investor shortly after a purchase of shares by him will have the effect of reducing the net asset value of his shares by the amount of the dividends or distributions. Furthermore, such dividends or distributions, although in effect a return of capital, are subject to taxes.

10 Illustrations of Assumed Investment Programs

ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000 IN INVESTORS MUTUAL, INC.

with Capital Gains Distributions Reinvested in Additional Shares

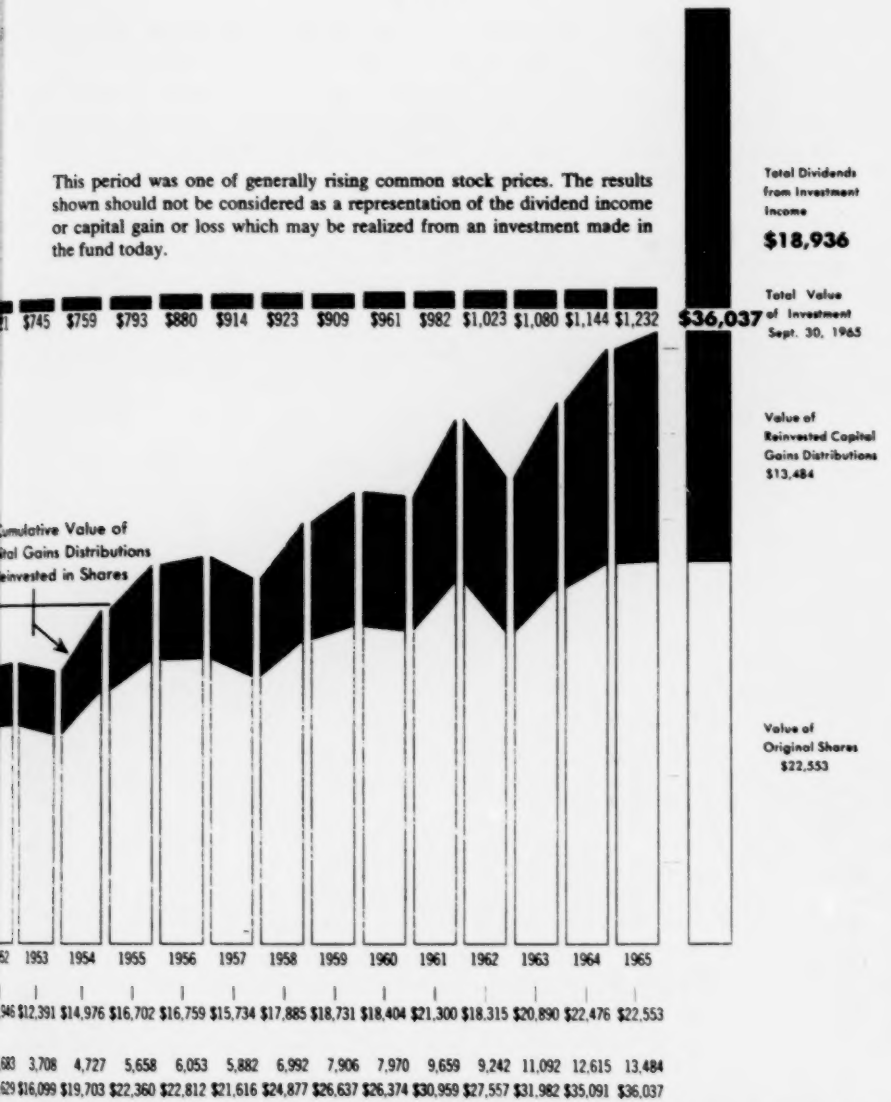
The chart below covers the period from April 16, 1940 (inception of the fund) to September 30, 1965.



Initial net asset value is the amount received by the fund after deducting from the cost of the investment the sales commission as described in the prospectus.

No adjustment has been made for any income taxes payable by stockholders on reinvested capital gains distributions. The dollar amounts of capital gains distributions reinvested in additional shares were: 1940—$74; 1941—$93; 1942—$51; 194

This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.



—$402; 1944—$368; 1945—$276; 1946—$623; 1947—$163; 1948—$204; 1949—$84; 1950—$141; 1951—$358; 1952—$256; 1953—$183; 1954—$245; 1955—$387; 1956—$382; 1957—$194; 1958—$310; 1959—$582; 1960—$203; 1961—$435; 1962—$936; 1963—$554; 1964—$680; 1965—$826. Total $9,010. If capital gains distributions *had not been reinvested*, total dividends from investment income for the period would have been $14,500, total capital gains distribution $6,856, and total value of investment $22,553 at September 30, 1965.

ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000 IN INVESTORS MUTUAL, INC.

with both Dividends from Investment Income and Capital Gains Distributions Reinvested in Shares

The table below covers the period from April 16, 1940 (inception of the fund) to September 30, 1965. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.

	COST OF SHARES			VALUE OF SHARES					NUMBER OF SHARES ACQ (To nearer full share one		
Fiscal Year End*	Amount of Dividends from Investment Income Reinvested Annually	Cumulative Cost of Shares Purchased through Reinvestment of Income Dividends	Total Cost Including Reinvested Income Dividends	(A) Initially Acquired	(B) Acquired through Reinvestment of Capital Gains Distributions (cumulative)	Sub-Total	(C) Purchased through Reinvestment of Income Dividends (cumulative)	Total Value	(A) Shares Initially Acquired	(B) Acquired through Reinvestment of Capital Gains Distributions (cumulative)	(C) Purchased through Reinvestment of Income Dividends (cumulative)
1940	$ 294	$ 294	$10,294	$ 8,739	$ 75	$ 8,814	$ 301	$ 9,115	1,840	16	63
1941	505	799	10,799	7,874	168	8,042	751	8,793	1,840	39	176
1942	477	1,276	11,276	7,994	229	8,223	1,253	9,476	1,840	53	288
1943	481	1,757	11,757	9,375	732	10,107	1,943	12,050	1,840	144	381
1944	520	2,277	12,277	10,542	1,282	11,824	2,720	14,544	1,840	224	475
1945	372	2,649	12,649	11,563	1,760	13,323	3,361	16,687	1,840	280	535
1946	591	3,240	13,240	11,392	2,545	13,937	3,848	17,785	1,840	411	621
1947	699	3,939	13,939	11,081	2,698	13,779	4,431	18,210	1,840	448	736
1948	792	4,731	14,731	10,461	2,835	13,296	4,950	18,246	1,840	499	870
1949	940	5,671	15,671	10,687	3,021	13,708	6,013	19,721	1,840	520	1,035
1950	958	6,629	16,629	11,906	3,585	15,491	7,680	23,171	1,840	554	1,187
1951	1,157	7,786	17,786	12,833	4,447	17,280	9,448	26,728	1,840	637	1,355
1952	1,207	8,993	18,993	12,946	4,920	17,866	10,728	28,594	1,840	699	1,525
1953	1,302	10,295	20,295	12,391	5,034	17,425	11,522	28,947	1,840	748	1,711
1954	1,386	11,681	21,681	14,976	6,538	21,514	15,369	36,883	1,840	803	1,888
1955	1,505	13,186	23,186	16,702	8,034	24,736	18,653	43,389	1,840	885	2,055
1956	1,733	14,919	24,919	16,759	8,812	25,571	20,394	45,965	1,840	968	2,239
1957	1,869	16,788	26,788	15,734	8,685	24,419	20,921	45,340	1,840	1,016	2,446
1958	1,966	18,754	28,754	17,885	10,534	28,419	25,873	54,292	1,840	1,084	2,662
1959	2,008	20,762	30,762	18,731	12,336	31,067	29,020	60,087	1,840	1,212	2,850
1960	2,198	22,960	32,960	18,404	12,590	30,994	30,657	61,651	1,840	1,259	3,065
1961	2,325	25,285	35,285	21,300	15,614	36,914	37,872	74,786	1,840	1,349	3,271
1962	2,502	27,787	37,787	18,315	15,745	34,060	34,862	68,922	1,840	1,582	3,502
1963	2,737	30,524	40,524	20,890	19,373	40,263	42,548	82,811	1,840	1,706	3,748
1964	3,002	33,526	43,526	22,476	22,649	45,125	48,832	93,957	1,840	1,854	3,998
1965	3,341	36,867	46,867	22,553	24,996	47,549	52,348	99,897	1,840	2,039	4,271

The total cost figure represents the initial cost of $10,000, which includes a sales commission of 8% as described in prospectus, plus the cumulative amount of income dividends reinvested without sales charge. The dollar amounts of capital gains distributions, reinvested in shares, also without sales commission were: 1940—$74; 1941—$100; 1942—$58; 1943—$474; 1944—$451; 1945—$349; 1946—$814; 1947—$222; 1948—$288; 1949—$125; 1950—$219; 1951—$583; 1952—$436; 1953—$325; 1954—$454; 1955—$745; 1956—$761; 1957—$403; 1958—$669; 1959—$1,303; 1960—$470; 1961—$1,042; 1962—$2,319; 1963—$1,422; 1964—$1,803; 1965—$2,268. Total—$18,177.

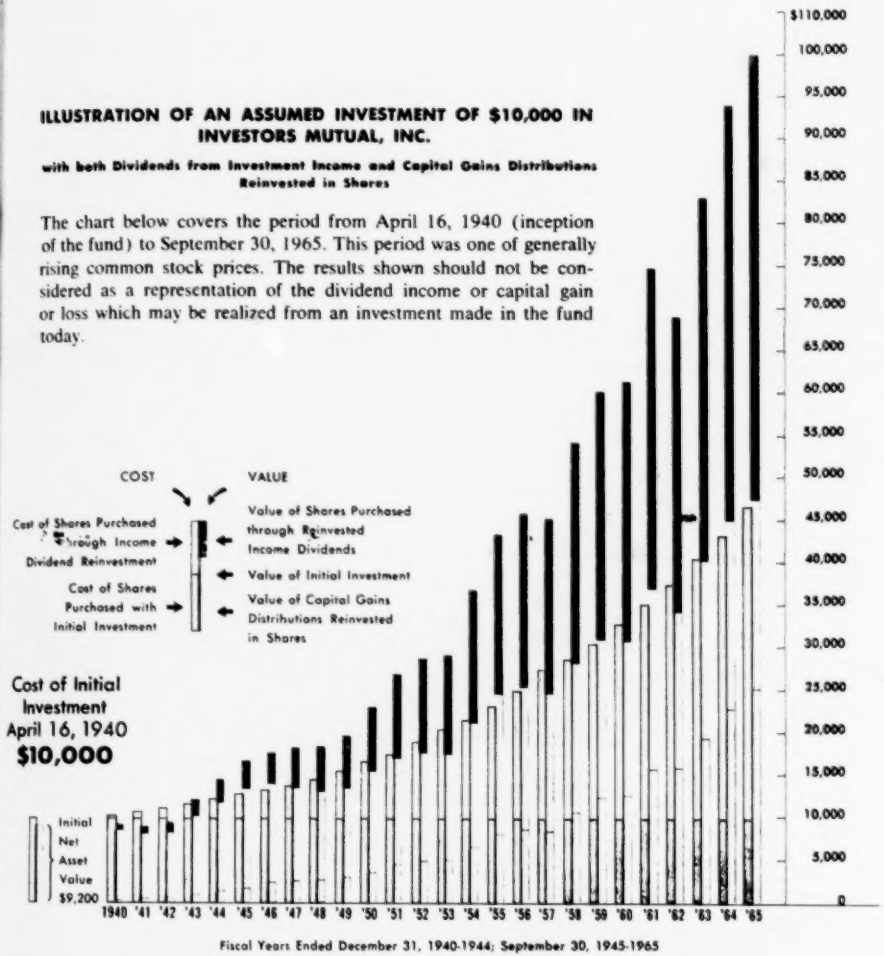
No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and income dividends reinvested in shares.

*Fiscal Years ended December 31, 1940-45; Fiscal Years ended September 30, 1945-1965.
**Adjusted for 2-for-1 stock split 4/26/56.

ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000 IN INVESTORS MUTUAL, INC.

with both Dividends from Investment Income and Capital Gains Distributions Reinvested in Shares

The chart below covers the period from April 16, 1940 (inception of the fund) to September 30, 1965. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.



Fiscal Years Ended December 31, 1940-1944; September 30, 1945-1965

Initial net asset value is the amount received by the fund after deducting from the cost of the investment the sales commission of 8% as described in the prospectus. Income dividends and capital gains distributions were assumed to have been reinvested in additional shares at net asset value. There is no sales commission charged for such reinvestment.

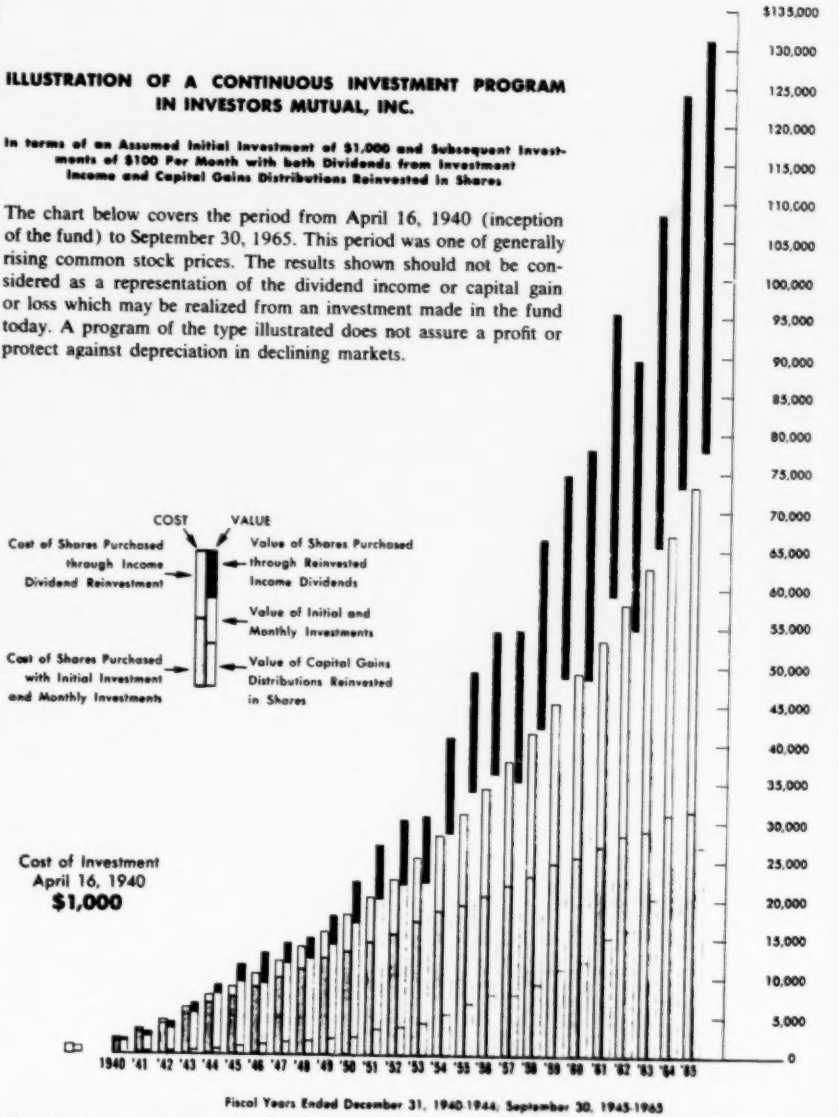
No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and income dividends reinvested in shares.

NOTE: See table on preceding page for dollar amounts represented by this chart.

ILLUSTRATION OF A CONTINUOUS INVESTMENT PROGRAM IN INVESTORS MUTUAL, INC.

In terms of an Assumed Initial Investment of $1,000 and Subsequent Investments of $100 Per Month with both Dividends from Investment Income and Capital Gains Distributions Reinvested in Shares

The chart below covers the period from April 16, 1940 (inception of the fund) to September 30, 1965. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today. A program of the type illustrated does not assure a profit or protect against depreciation in declining markets.



Fiscal Years Ended December 31, 1940-1944; September 30, 1945-1965

Total cost for each year represents the initial investment of $1,000 plus the cumulative total of monthly investments of $100 per month plus the cumulative amount of income dividends reinvested. The cost for shares purchased with initial and monthly investments includes sales commissions starting at 8% and graduated downward as described in section 15 of the prospectus. No sales commission is charged for reinvestment of any income dividends or capital gains distributions.

No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and income dividends reinvested in shares.

NOTE: See table on following page for dollar amounts represented by this chart.

ILLUSTRATION OF A CONTINUOUS INVESTMENT PROGRAM IN INVESTORS MUTUAL, INC.

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e table below covers the period from April 16, 1940 (inception of the fund) to September 30, 1965. This iod was one of generally rising common stock prices. The results shown should not be considered as a esentation of the dividend income or capital gain or loss which may be realized from an investment de in the fund today. A program of the type illustrated does not assure a profit or protect against de- iation in declining markets.

	COST OF SHARES				VALUE OF SHARES						NUMBER OF SHARES ACQUIRED** (To nearer full share amount)			
ount of dends ein- ment- ment come ested nally	Cumulative Cost of Shares Purchased through Reinvestment of Income Dividends	Total of Initial and Monthly Investments	Total Cost Including Reinvested Income Dividends	Average Cumulative Per Share Cost**	(A) Acquired through Initial and Monthly Investments	(B) Acquired through Reinvestment of Capital Gains Distributions (cumulative)	Sub-Total	(C) Purchased through Reinvestment of Income Dividends (cumulative)	Total Value	Year-end Per Share Value**	(A) Acquired through Initial and Monthly Investments (cumulative)	(B) Acquired through Reinvestment of Capital Gains Distributions (cumulative)	(C) Purchased through Reinvestment of Income Dividends (cumulative)	Total Shares Held (cumulative)
55	$ 55	$ 1,800	$ 1,855	$5.15	$ 1,641	$ 14	$ 1,655	$ 56	$ 1,711	$4.75	345	3	12	360
37	192	3,000	3,192	5.01	2,503	44	2,547	181	2,728	4.28	585	10	42	637
88	380	4,200	4,580	4.82	3,685	70	3,755	377	4,132	4.34	848	16	87	951
41	621	5,400	6,021	4.77	5,440	319	5,759	679	6,438	5.10	1,067	63	133	1,263
06	927	6,600	7,527	4.80	7,277	636	7,913	1,079	8,992	5.73	1,270	111	188	1,569
44	1,171	7,500	8,671	4.86	8,845	932	9,777	1,433	11,210	6.28	1,408	148	228	1,784
19	1,590	8,700	10,290	4.90	9,696	1,511	11,207	1,790	12,997	6.19	1,566	244	289	2,099
38	2,128	9,900	12,028	5.02	10,503	1,646	12,149	2,271	14,420	6.02	1,744	273	377	2,394
58	2,786	11,100	13,886	5.08	10,966	1,799	12,765	2,781	15,546	5.69	1,929	316	489	2,734
38	3,624	12,300	15,924	5.14	12,340	1,952	14,292	3,694	17,986	5.81	2,125	336	636	3,097
06	4,530	13,500	18,030	5.22	14,903	2,386	17,289	5,044	22,333	6.47	2,303	369	779	3,451
50	5,680	14,700	20,380	5.27	17,209	3,160	20,369	6,599	26,968	6.97	2,468	453	946	3,867
50	6,930	15,900	22,830	5.35	18,473	3,644	22,117	7,896	30,013	7.04	2,626	518	1,122	4,266
99	8,329	17,100	25,429	5.44	18,749	3,841	22,590	8,905	31,495	6.73	2,784	571	1,322	4,677
41	9,870	18,300	28,170	5.54	23,890	5,152	29,042	12,366	41,408	8.14	2,935	633	1,519	5,087
16	11,586	19,500	31,086	5.65	27,803	6,599	34,402	15,517	49,919	9.08	3,063	727	1,710	5,500
23	13,609	20,700	34,309	5.78	28,988	7,504	36,492	17,527	54,019	9.11	3,183	824	1,924	5,931
26	15,835	21,900	37,735	5.93	28,265	7,539	35,804	18,568	54,372	8.55	3,305	882	2,171	6,358
87	18,222	23,100	41,322	6.05	33,361	9,379	42,740	23,647	66,387	9.72	3,432	965	2,433	6,830
79	20,701	24,300	45,001	6.14	36,040	11,441	47,481	27,139	74,620	10.18	3,540	1,124	2,666	7,330
56	23,457	25,500	48,957	6.30	36,527	11,833	48,360	29,354	77,714	10.00	3,652	1,183	2,935	7,770
56	26,413	26,700	53,113	6.44	43,485	15,027	58,512	37,012	95,524	11.58	3,757	1,298	3,197	8,252
21	29,634	27,900	57,534	6.43	38,403	15,919	54,322	34,782	89,104	9.95	3,858	1,600	3,494	8,952
65	33,199	29,100	62,299	6.53	44,994	20,008	65,002	43,300	108,302	11.35	3,963	1,762	3,814	9,539
51	37,150	30,300	67,450	6.64	49,593	23,912	73,505	50,608	124,113	12.22	4,060	1,958	4,143	10,161
40	41,590	31,500	73,090	6.73	50,904	27,017	77,921	55,231	133,152	12.26	4,153	2,204	4,506	10,863

total cost figures represent the initial investment of $1,000 plus the cumulative total of monthly investments of $100 month plus the cumulative amount of income dividends reinvested. The cost for shares purchased with initial and nthly investments includes sales commissions starting at 8% and graduated downward as described in section 15 of the spectus. No sales commission is charged for reinvestment of any income dividends or capital gains distributions. Year asset values include the value of shares purchased by reinvestment of the following dollar amounts of capital gains dis- tions: 1940—$14; 1941—$31; 1942—$25; 1943—$242; 1944—$272; 1945—$232; 1946—$595; 1947—$176; 1948— 1949—$114; 1950—$211; 1951—$589; 1952—$457; 1953—$354; 1954—$510; 1955—$856; 1956—$895; 1957— 1958—$818; 1959—$1,618; 1960—$592; 1961—$1,332; 1962—$2,998; 1963—$1,859; 1964—$2,382; 1965—$3,023. l—$20,924.

djustment has been made for any income taxes payable by shareholders on capital gains distributions and income divi- ds reinvested in shares.

iscal Years ended December 31, 1940-45; Fiscal Years ended September 30, 1945-1965.

djusted for 2-for-1 stock split 4/26/56.

11 Investment Restrictions

The Company observes certain investment restrictions which may not be changed without stockholder action and which provide among other things that the Company:

(1) Shall not purchase securities on margin or sell short;

(2) Shall not invest more than 5% of the gross assets of the Company taken at cost in securities of any one corporation;

(3) Shall not acquire more than 10% of the outstanding voting securities of any one corporation;

(4) Shall not borrow money or property except as a temporary measure for extraordinary or emergency purposes. The Certificate of Incorporation limits borrowing to 10% of the gross assets of the Company taken at cost;

(5) Shall not invest more than 5% of the total assets of the Company in securities of companies which have a record of less than three years' continuous operation, including predecessor companies;

(6) Shall not sell any of its shares at less than asset value;

(7) Shall not purchase securities of an investment trust or an investment company except in the open market where there is no profit to a sponsor or dealer thereof other than customary brokerage;

(8) Shall not buy from or sell to any officer or director of Investors Diversified Services, Inc., or of the Company, any property or any security other than securities issued by the Company;

(9) Shall not make any loans to any of its officers or directors, or to any firm or syndicate of which any such officer or director is a member, or to any association or corporation of which any of the Company's officers or directors is an officer or a director, or in which the officers and directors of the Company directly or indirectly hold an aggregate interest of ten per cent (10%) or more; nor shall it loan any part of its assets to Investors Diversified Services, Inc., or any officer or director of that company;

(10) Shall not pledge, mortgage, or hypothecate the assets of the Company, taken at market value, to an extent greater than 15% of the gross assets of the Company taken at cost.

The Company is also subject to restrictions under the provisions of the Investment Company Act of 1940, particularly as to transactions with certain affiliated persons and underwriters, changing of certain investment policies recited in its registration statement, and the investment of its funds in certain specified types of companies.

12 Free Transfer of Investments

Investors Diversified Services, Inc. acts as the underwriter and investment manager for Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., and Investors Variable Payment Fund, Inc. (these open-end, diversified investment companies being included in what is frequently referred to as the "Investors Group"). The shareholders of these companies (each of which differs from the others as to investment policies and purposes) have the privilege of transferring without sales charge their investments in shares of one or more of the companies into investments in shares of any of the other companies at respective net asset values. In the case of Investors Selective Fund, Inc., there are certain restrictions regarding transfers from that Fund as explained in the prospectus of that Company.

This privilege is not an option or right to purchase such securities but is a privilege permitted under the present policy of each of these companies. This policy may be discontinued, cancelled or changed by any of the respective companies at any time. The privilege of transferring investments will be extended by the present managements of the respective companies in the absence of objection by regulatory authorities and provided shares of the respective companies are available and may lawfully be so issued in the jurisdiction in which any shareholder wishing to exercise this privilege resides, or until the privilege, in the opinion of the managements of the respective companies, imposes an unwarranted and unreasonable burden or hardship on the respective companies.

The transfer of investment is effected by authorizing the Company to redeem the shares and apply the proceeds to the purchase of shares of the other specified company. For federal income tax purposes of the shareholder redemption of the shares being transferred is ordinarily the equivalent of a sale of the shares. The company receiving the transferred investment will deliver a current prospectus and upon receiving a signed receipt therefor will issue its shares at asset value.

13 Custodianship of Assets

Portfolio securities and cash of the Company are deposited, under a custodian agreement, with the Bank of Delaware, of Wilmington, Delaware. This institution maintains custody of all securities and cash of the Company so deposited but otherwise performs no managerial or policy-making functions for the Company.

14 Offering Price of Shares

(a) Shares of the Company are offered at their public offering price at the close of business [as defined in sub-section (j)] on the day upon which the application and payment are received at the principal place of business of the Company. If these are not received prior to the close of business, the shares are issued at the public offering price as of the close of business on the next succeeding full business day. If the day upon which the application and payment are received at the principal place of business of the Company is not a full business day, the price of the shares is computed as of the close of business on the next succeeding full business day.

(b) The asset value is computed as of the close of trading on the New York Stock Exchange in accordance with sound accounting practice and in the manner authorized by the Board of Directors, as follows: Securities listed on national securities exchanges are valued on the basis of the closing sale each day, or if no sale is made, at the mean of the closing bid and asked prices of such securities. Securities not listed or traded on a national securities exchange, but for which market quotations are readily available, are valued at market value as defined in the Certificate of Incorporation. Securities having no current market price are valued at fair value as determined in good faith by the Board of Directors. Dividends declared but not received are accrued on the ex-date of such dividends. Interest on bonds not traded "flat" is accrued daily. All cash and receivables and current payables are carried at their face value. The investment advisory and services fee, which comprises the entire management and operating expense of the Company, is accrued daily. No taxes are accrued on unrealized appreciation since the Company has elected to meet the requirements of Sections 851-855 of the federal Internal Revenue Code and intends to distribute to stockholders any capital gains realized. See section 22(g). From the total value of the assets are deducted the total outstanding liabilities (exclusive of capital stock and surplus accounts) including all reserves and estimated accrued expenses. The resulting net worth is divided by the number of shares outstanding to determine the asset value per share of capital stock.

(c) Computation of the public offering price of shares of capital stock of the Company is illustrated below:

Net assets at September 30, 1965 as per Statement of Net Assets (Page 24)	$2,940,769,421
Divided by number of shares outstanding September 30, 1965	239,926,645
Asset value of a share of capital stock	$12.257
Plus 8%* of public offering price	1.063
Public offering price [$12.257 ÷ .92]	$13.32

*Sales Charges are graduated as follows:

Amount of Application	Per Cent of Public Offering Price
To $14,999	8
$15,000 to $19,999	7½
$20,000 to $24,999	7
$25,000 to $49,999	6
$50,000 to $99,999	4
$100,000 to $199,999	2½
$200,000 to $399,999	2
$400,000 to $699,999	1½
$700,000 and over	1

(d) The above graduated sales charges will apply on initial purchases in the amounts stated and also on any subsequent purchases where the aggregate investment of the same shareholder (and to the extent that such shares are still registered in his name) is $15,000 or more; for example, if a shareholder had previously purchased and still held shares for which he had paid $10,000 and made a subsequent purchase of $6,000, the sales charge applicable to this latter pur-

chase would be 7½%. If such shareholder after his initial purchase (shares still held by him) had made an application for an additional $11,000, bringing his aggregate investment to $21,000, the sales charge on the latter purchase would be 7%. Shares held in the name of the spouse of the purchaser or in the name of a child of the purchaser under 21 years of age will be treated for purposes of this section as being registered in the name of the purchaser. Reinvested dividends and reinvested capital gains distributions (see sections 7 and 9) are included in determining the aggregate amount invested, although no sales charge is made for such reinvestment.

(e) The foregoing paragraph is applicable to a trustee or other fiduciary purchasing securities for a single trust estate or single fiduciary account (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code).

(f) Since Investors Diversified Services, Inc. is also the principal distributor for shares of Investors Stock Fund, Inc., Investors Selective Fund, Inc., Investors Variable Payment Fund, Inc. and Investors Inter-Continental Fund, Inc., the graduated scale of sales charges applicable in the manner stated above will apply to purchases by any of the persons enumerated in (d) or (e), above, of shares representing a combination of the five Funds or an addition to the aggregate holdings in those companies. For example, if an investor had purchased and still held shares of Investors Stock Fund, Inc. for which he paid $15,000, and he made a purchase of shares of Investors Mutual, Inc. in an amount of $6,000, the rate of sales charge applicable on this latter purchase would be 7%, as shown in the foregoing table. There is a different graduated scale of sales charges with respect to Investors Selective Fund, Inc.

(g) In addition, the reduced sales charges reflected under sub-section (c) are also applicable to the aggregate amount of purchases made by any of the persons enumerated above within a thirteen months period pursuant to a written statement of intention provided by the principal distributor, which includes provisions for a price adjustment depending upon the actual amount purchased within such period, provided that the purchases aggregate not less than $50,000 and the investor still owns the shares at the end of the period. This is not an option, warrant or right to purchase additional shares and there is no penalty upon either party if the intention is not fulfilled.

As an example of how this reduced sales charge is applied, let us assume a purchaser submits, with his application for $10,000, a written statement of his intention to invest a total of $50,000 at various times during the next succeeding thirteen months. On his initial investment of $10,000 he would pay a sales charge of 8%. Thereafter he invests an additional $10,000, bringing his total holdings to $20,000. On the latter investment he would pay the sales charge applicable to holdings of $20,000, or 7%. This method would continue on his other purchases during the period according to the schedule in sub-section (c), and with the last investment for the period he would receive an adjustment on his total purchases (still held by him) of $50,000 for the difference between the respective sales charges paid and the 4% sales charge applicable on the $50,000 aggregate investment. In other words, he would receive the same benefit of the 4% sales charge as though he had made the $50,000 investment in a single purchase. Further, should it develop that his aggregate purchases during the period exceed the $50,000 originally specified by an amount sufficient to qualify for an additional quantity discount (for example, should his actual purchases equal $100,000), he would receive the same benefit as though he had specified the larger amount in his original statement of intention.

(h) Officers, directors, employees and sales representatives of the distributor or of the Company (and any trust, pension, profit-sharing or other benefit plan for such persons) may be permitted to purchase shares of the Company at net asset value, provided that such purchases are made upon the written assurance of the purchaser that the purchase is made for investment purposes and that shares so acquired will not be resold except through regular redemption by the Company.

(i) The bylaws of the Company provide that during any period in which the sale of shares issued by the Company shall be discontinued, the Board of Directors, in arriving at asset value for redemption purposes, may deduct from the value of the assets an amount equal to the brokerage commissions, transfer taxes and charges, if any, which would be payable on the sale of all securities in the portfolio of the Company if they were then being sold. The purpose of this provision is to distribute these charges over all outstanding shares if redemptions continue when no further sales are being made.

(j) A "full business day" is defined as a day with respect to which the New York Stock Exchange is open for business, and with respect to which the actual time of closing of such Exchange is that time which shall have been scheduled for such closing in advance of the opening of such Exchange. The "close of business" is defined as the time of closing of the New York Stock Exchange.

5 Distribution of Shares

Since the inception of the Company, its shares ave been distributed exclusively by Investors Diver-fied Services, Inc. (IDS), of Minneapolis, Minne-ota, pursuant to distribution agreements, the most cent of which is dated April 6, 1963 and reexecuted n October 31, 1963. Applications for shares of the ompany are solicited by representatives of the dis-ibutor and submitted to the Company for acceptance r rejection.

IDS receives, in full payment for its services as istributor of the shares of Capital Stock of the Com-any, a fee equal to the difference between the mount received with each application and the asset alue of the shares sold pursuant to such application, etermined as stated in section 14 which also gives he present rate of the distribution fee. IDS received during the fiscal year ended September 30, 1965, distribution fees amounting to $20,276,818, out of which it allowed commissions of $13,990,881 to its sales representatives and paid other expenses incidental to and in connection with the distribution and sale of the Company's Capital Stock.

During the period of the distribution agreement IDS will pay certain expenses in connection with the issuance and sale of the Company's securities, as specified by the agreement. The agreement provides that it shall continue in effect from year to year after April 6, 1963 provided such continuance is approved annually by the Board of Directors of the Company or by a vote of the majority of the outstanding shares of the Company. The agreement may be terminated by either party upon sixty days' written notice.

6 Redemption of Shares

(a) By express provision in the Company's ertificate of Incorporation, the registered holder of hares of the Company has the right to require the ompany to redeem his shares. The redemption is ccomplished by delivering to the Company at its rincipal place of business the stock certificate and a ritten request for redemption in form satisfactory o the Board of Directors. There is no redemption harge. Redemption of all or any part of shares for hich a certificate has not been issued may be effected y a written request signed by the registered owner nd directed to the Company.

(b) The redemption value of shares will be the sset value calculated as of the close of business (as efined in section 14(j)) on the day of receipt of the urrendered stock certificate or request at the Com-any's principal place of business. If the day of sur-ender of the certificate or request is not a full busi-ess day, then the asset value for the purposes of edemption will be calculated as of the close of busi-ess on the next succeeding full business day.

The method of calculating the asset value of shares s shown in section 14(b). For a change in the ethod of calculating redemption value if the sale f shares of the Company is discontinued, see section 4(i). The market value of securities in the Com-any's portfolio is subject to daily fluctuations, and he asset value will fluctuate accordingly. The amount shareholder will receive on redemption of his shares ay be more or less than the price paid therefor, depending upon the market value of the portfolio securities at the time of redemption. The Company presently pays the redemption value in cash as soon as the amount is determined. Payment may not be deferred for a period exceeding seven days except during a period of emergency.

(c) During any period of emergency, the Board of Directors, in its discretion, may suspend the computation of asset value for the purpose of issuing or redeeming its shares, may suspend the acceptance of payments from the holders or owners of any of its securities for the acquisition of additional shares of the Company, and may suspend the obligation of the Company to redeem stock.

A period of emergency is defined to be:

(1) A period during which the New York Stock Exchange is closed for other than customary week-end or holiday closings, or during which trading on the New York Stock Exchange is restricted;

(2) A period during which disposal by the Company of securities owned by it is not reasonably practicable or during which it is not reasonably practicable for the Company fairly to determine the value of its net assets; or

(3) Such other periods as the Securities and Exchange Commission, pursuant to the provisions of the Investment Company Act of 1940, may by order declare as an emergency period or periods.

17 Systematic Pay-out Options

The Company makes available to its shareholders, without additional charge, periodic withdrawal or pay-out options designed to meet the differing objectives of shareholders. The cost of administering them is, pursuant to contract, borne by Investors Diversified Services, Inc. (IDS), the Fund's investment manager and distributor. These pay-out options contemplate the liquidation of the shareholder's holdings of Fund shares, and amounts received during the pay-out period will represent a combination of principal and income. Dividends and capital gains distributions made to the Fund's shareholders must be reinvested at net asset value in additional shares of the Fund by investors who select a systematic pay-out plan.

Option 1. Variable pay-out over a stated number of years by monthly, quarterly, or annual redemptions of shares—for the shareholder who desires to spread the pay-out of his holdings over a fixed number of years on a basis that will tend to be reasonably responsive to changes in the purchasing power of the dollar.

This option provides a method of periodic (monthly, quarterly, or annual) redemption of shareholdings, including shares, if any, created by reinvestment of dividends and realized capital gains during the pay-out period, over the number of years specified by the owner. It is designed to produce payments to the shareholder from period to period which will vary with the performance of the Fund (i.e., will vary with changes in the market value of the securities in the Fund portfolio). Obviously, it is impossible to give any assurances of the extent, if any, to which these variations will match changes in the purchasing power of the dollar. Under this option all shares will be redeemed and the shareholder's investment entirely liquidated by the end of the specified number of years.

The number of years and the payment frequency will be those specified by the shareholder at the time he elects the option. The number of shares redeemed to make each payment will be calculated by dividing the total shares then available (including such shares, if any, as have been added from time to time through reinvestment of dividends and realized capital gains during the pay-out period) by an appropriate variable payment factor. The only purpose served by the variable payment factor is to determine the number of shares to be redeemed. The dollar amount of each payment will depend both on number of shares redeemed and asset value per share at the time payment is made.

Option 2. Variable pay-out by monthly, quarterly, or annual redemptions of a stated number of shares each period until all shares are redeemed. The payment frequency and number of shares will be specified by the shareholder in his request for pay-out option. The length of time over which payments will be made will depend upon the total number of shares owned, including such shares, if any, as have been added from time to time through reinvestment of dividends and realized capital gains during the pay-out period.

Option 3. Pay-out by monthly, quarterly, or annual redemptions of shares to provide a specified dollar amount each period until all shares are redeemed. The payment frequency and dollar amount of each payment will be specified by the shareholder in his request for pay-out option.

To elect one of the options, the shareholder should make written request on or before the date he wishes payments to begin. The option elected will remain in effect unless subsequently changed at the request of the shareholder. While there is no minimum dollar amount requirement for opening a systematic pay-out plan, a limitation on the availability of these options is that each payment under Option 3 shall be not less than $50 and that the initial payment (and the final payment after a request for change would become effective) under either Option 1 or Option 2 shall be not less than $50. These pay-out options have been designed to meet the needs of most shareholders and are in a form that IDS can handle expeditiously and at reasonable cost. If a shareholder wishes any other pay-out method or methods the procedure set out in section 16 will be followed, with the shareholder making a separate written request for each redemption. To meet situations presently unforeseen, the Company reserves the right to alter or discontinue any systematic pay-out plan elected by any shareholder and to discontinue the availability of any such plans in the future. The purchase of shares in a mutual fund either occasionally or pursuant to a systematic investment plan, at the same time as a systematic pay-out plan is in effect with respect to the same or any other fund would normally be disadvantageous to an investor because he would be paying a sales load on the amount being invested at the same time as he would be withdrawing money on which he had already paid a sales load. Mutual funds distributed by IDS will not accept applications for fund shares made pursuant to a systematic investment plan while a systematic pay-out plan is in effect with respect to any of such funds. However, isolated or occasional investments on a non-regular basis may be accepted. Attention is also called to the fact that if withdrawals by an investor under a systematic pay-out plan are in excess of current dividend income from his shares, he will reduce and may ultimately exhaust his principal.

18 Remuneration and Fees

Investors Diversified Services, Inc. (IDS) pays or reimburses the Company for the entire remuneration of all directors and officers of the Company. During the fiscal year ended September 30, 1965, IDS received $10,438,087 as fees under the investment advisory and services agreement with the Company as described below.

IDS has acted as investment adviser of the Company since the Company's inception. On October 15, 1964 the present investment advisory and services agreement was approved by stockholders of the Company and entered into on that date. The present agreement provides for a graduated scale of fees equal on an annual basis to .50% on the first $350 million of average net assets, .47% on the next $300 million, .44% on the next $250 million, .41% on the next $250 million, .38% on the next $250 million, .35% on the next $250 million, .32% on the next $250 million and .30% on all assets in excess of $1.9 billion. The agreement also provides for a flat reduction of $170,000 a year ($14,166.67 monthly) from the fees computed in accordance with that scale.

The advisory and services fee is payable monthly but is calculated daily on the basis of net assets at the close of business each day.

The agreement provides that all expenses of the Company will be absorbed by IDS except (a) the fee under the agreement, (b) contractual expenses relating to the sale and distribution of the Company's shares, (c) certain taxes, and (d) broker's fees on the purchase and sale of assets. In addition, the agreement provides that IDS shall pay or reimburse the Company for legal fees and expenses of outside counsel and professional consultants employed by it provided they are reasonable in amount.

The agreement requires that IDS, among other things, provide the Company with investment research and advice and make specific investment recommendations, subject to the direction and control of the Board of Directors, the Executive Committee and the officers of the Company. It will remain in effect until September 30, 1966, and may continue from year to year thereafter, provided such continuance after September 30, 1966 is specifically approved at least annually (1) by vote of the Directors of the Company and by vote of a majority of the directors who are not parties to such agreement or affiliated persons of any such party or (2) by vote of a majority of the outstanding voting securities of the Company. Such a majority vote is defined in the Investment Company Act of 1940 as 67% or more of the voting securities present at a stockholders' meeting, if more than 50% of such outstanding shares are present or represented by proxy, or more than 50% of the outstanding voting securities, whichever is less. The agreement also provides that it may be terminated without penalty by either party on 60 days' written notice, provided that such termination on the part of the Company is approved either by the Board of Directors or by a vote of a majority of the outstanding voting securities of the Company as defined above, and that it will terminate automatically in the event of its "assignment" by IDS as defined in such Act.

Reference is also made to section 15 for a statement as to sales charges received by IDS, as distributors of shares of the Company.

19 Officers and Directors

The directors and executive officers of the Company are listed below, together with information which includes their principal occupations during the past five years.

Harold K. Bradford*
1000 Roanoke Building
Minneapolis, Minn.
Chairman of the Board of Directors and President

Chairman of the Board, President and Director, Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Variable Payment Fund, Inc., Investors Stock Fund, Inc. and Investors Inter-Continental Fund, Inc. (formerly Ltd.).

W. Grady Clark
Investors Building
Minneapolis, Minn.
Director

Retired; Mr. Clark served as President of Investors Diversified Services, Inc. from July, 1960 to February, 1963 and thereafter as Chairman of the Board of that Company until he retired at the end of 1964. He is a Director of Investors Diversified Services, Inc., Investors Syndicate of America, Inc., Investors Syndicate Life Insurance and Annuity Company, Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc. and Investors Inter-Continental Fund, Inc.

* Member of Executive Committee

Gen. Mark W. Clark U. S. A., Retired Charleston, S. C. *Director*	President Emeritus, The Citadel, the Military College of South Carolina. Director Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., Consolidated Foods Corp. and Dayco Corporation. Prior to his retirement from active duty with the Army, General Clark was, among other things, Chief of Staff of the Army Ground Forces and commanding general of the U. S. 5th Army during World War II, and commanding general of the U. S. Army Forces in the Far East during the Korean War.
John C. Cornelius* Northwestern Bank Building Minneapolis, Minn. *Director*	Retired executive vice president of and now senior consultant to the advertising firm of Batten, Barton, Durstine & Osborn. Mr. Cornelius is a Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., Investors Inter-Continental Fund, Inc., Rexall Drug & Chemical Company, Red Owl Stores, Inc. and Doughboy Industries.
Lewis L. Crosby* 1104 Roanoke Bldg. Minneapolis, Minn. *Director*	Retired as Vice President of Cargill, Inc. in 1964; now a Director, member of Executive Committee and Consultant to Chicago Great Western Railway. Director, Investors Mutual, Inc., Investors Stock Fund, Inc., and Investors Selective Fund, Inc.
Randall F. Fullmer 1140 Terminal Tower Cleveland, Ohio *Director*	Partner in the law firm of Burgess, Fullmer, Parker & Steck, Cleveland, Ohio. Mr. Fullmer, a Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc. and Investors Variable Payment Fund, Inc., is also a Director of the Bulkley Building Company, Director of and Counsel for Duplex Manufacturing and Foundry Company.
Laurence M. Gould Tucson, Ariz. *Director*	Geologist. President Emeritus, Carleton College. Mr. Gould is a Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc. and Investors Variable Payment Fund, Inc.
Frederick L. Hovde Purdue University Lafayette, Ind. *Director*	President, Purdue University. Mr. Hovde is a Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., General Electric Company and Inland Steel Company.
Richard M. Nixon 20 Broad Street New York, N. Y. *Director*	Partner in law firm of Nixon, Mudge, Rose, Guthrie & Alexander, New York, N. Y., 1963 to present. From January 1, 1961 to January 1, 1963 Counsel to law firm of Adams, Duque & Hazeltine, Los Angeles, California. Vice President of United States from 1953 to 1961. Mr. Nixon is a Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., and Harsco Corporation.
Robert C. Reed 339 E. Foster Place Lake Forest, Ill. *Director*	Personal investments. Director of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc. and Investors Variable Payment Fund, Inc.
Stuart F. Silloway 800 Investors Building Minneapolis, Minn. *Director*	President and director of Investors Diversified Services, Inc., Investors Syndicate of America, Inc. and Investors Syndicate Life Insurance and Annuity Company. Mr. Silloway was President of the investment banking firm of Harriman, Ripley & Co., Inc. until September, 1963 and then a partner of Brooks, Harvey & Co., mortgage bankers, until July, 1964 when he became President of Investors Diversified Services, Inc. Director, Investors Mutual, Inc., Investors Stock Fund, Inc., Investors Selective Fund, Inc., and Investors Variable Payment Fund, Inc.

* Member of Executive Committee

George E. MacKinnon 1000 Roanoke Building Minneapolis, Minn. *General Counsel and Vice President*	Lawyer in Minneapolis since 1929; Assistant Counsel Investors Syndicate 1929-1942; Minnesota State Representative 1934-1942; U. S. Navy 1942-1946; Member of Congress 1947-1948; U. S. District Attorney—Minnesota 1953-1958; Special Assistant to U. S. Attorney General 1960; General Counsel and Vice-President of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc. and Investors Inter-Continental Fund, Inc. (formerly Ltd.) 1961 to date.
George A. Mahon Investors Building Minneapolis, Minn. *Vice President*	Vice President, Investors Diversified Services, Inc., Investors Syndicate of America, Inc., Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., and Investors Inter-Continental Fund, Inc.
Norman B. Waag Investors Building Minneapolis, Minn. *Vice President*	Vice President, Investors Diversified Services, Inc., Investors Syndicate of America, Inc., Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc. and Investors Inter-Continental Fund, Inc. Director, Investors Syndicate of America, Inc. and Investors Syndicate Life Insurance and Annuity Company.
Robert S. Ersted 1000 Roanoke Building Minneapolis, Minn. *Secretary and Treasurer*	Mr. Ersted became Secretary and Treasurer of Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., Investors Inter-Continental Fund, Inc. (formerly Ltd.) in June 1962. During the preceding five years he was a practicing lawyer in Minneapolis.

20 Certain Information Concerning Investors Diversified Services, Inc.

Investors Diversified Services, Inc. (IDS), the investment adviser and distributor for the Company, has outstanding 4,395,905 shares of Class A Common Stock and 11,490,800 shares of Class B Common Stock, both classes having equal per-share voting rights. Alleghany Corporation (Alleghany), 350 Park Avenue, New York, N. Y. owns beneficially 495,815 shares of Class A Common Stock and 6,295,360 shares of Class B Common Stock, constituting 42.75% of the outstanding voting stock of IDS, and giving it control of IDS within the meaning of the Investment Company Act of 1940. Allan P. Kirby, 117 DeHart Street, Morristown, N. J. owns beneficially 4,084,813 shares (approximately 40.52%) of the outstanding Common Stock of Alleghany. Mr. Kirby and certain associates have stated to the Company that they will not promote and that they will use their best efforts to avoid any change being made in the incumbent IDS officer occupying the position of Vice President-Sales of IDS without ample advance notice to the President of the Company and the fullest consultation with him regarding the change and as to the suitability of the proposed replacement, and they will not promote and they will use their best efforts to avoid any change being made with respect to the present policies of IDS involving the sale of shares of the Company, or the use of the IDS sales force in connection with or in relation to such sales and which will affect the offering or sale of shares of the Company, or in the present operating policies of the Investment Department of IDS as they relate to the Company, without ample advance notice to and the fullest consultation with the President of the Company. The President of the Company has stated that in such event he would in turn consult with the Board of Directors.

21 Indemnification of Officers and Directors

On December 15, 1961, the directors of the Company passed a resolution providing for the indemnification by the Company, to the extent permitted by law, of past and present officers and directors against expense incurred by them in connection with the defense of any legal action in which they are made parties by reason of their office. In the opinion of counsel for the Company, concurred in by counsel for IDS, such expense if payable by the Company may be recoverable by the Company from IDS.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors or officers of the Company pursuant to the above resolution, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid

by a director or officer of the Company in the successful defense of any action, suit or proceeding) is asserted by such director or officer in connection with the securities registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

22 Miscellaneous

(a) Shares of stock issued by the Company are all of one class, designated Capital Stock, with a par value of $.50 per share. All shares are fully paid, non-assessable and transferable, with equal rights to earnings, dividends and assets. All shares have equal voting rights. Shares may be issued as full or fractional shares. Each fractional share has the same rights, including voting rights, which are provided for a full share but in the proportion which a fractional share bears to a full share. The shares have cumulative voting rights when voting upon the election of directors.

(b) Annual and semi-annual financial reports of the Company are mailed to each shareholder. The Company's financial statements as of the close of each fiscal year (September 30th) are examined by a firm of independent certified public accountants. The accounting firm of Peat, Marwick, Mitchell & Co., Minneapolis, Minnesota, has for a number of years been selected for this purpose.

(c) The Board of Directors of the Company, at its discretion, may require the payment of a fee not exceeding $1.00 for each new stock certificate issued by the Company as a result of transfers or assignments, or as the result of lost, stolen, mutilated or destroyed certificates, or in connection with any special service by request, by a shareholder requiring the issuance of a new certificate, in addition to the payment of any lost instrument bond premiums, and federal or state taxes required to be paid in connection therewith.

(d) Investors Mutual, Inc. was incorporated on January 18, 1940 under the laws of the State of Nevada. Its principal offices are located in Minneapolis, Minnesota. Its charter provides for perpetual existence.

(e) As of September 30, 1965, officers and directors of the Company, as a group, owned less than 1% of the outstanding Capital Stock of the Company.

(f) The Company operates as a mutual diversified investment fund of the open-end type and has registered as such under the federal Investment Company Act of 1940. This registration does not involve supervision of management or investment practices or policies.

(g) In order to minimize federal income taxes, the management of the Company intends to conduct its business and Investors Diversified Services, Inc., its investment manager, intends to make recommendations and approvals as to investments, so that the Company may meet the requirements of Sections 851-855 of the federal Internal Revenue Code. The Company has met such requirements for the past fiscal year.

(h) Investors Diversified Services, Inc. (IDS) acts as principal underwriter and investment adviser for Investors Mutual, Inc., Investors Stock Fund, Inc., Investors Selective Fund, Inc., and Investors Variable Payment Fund, Inc., open-end investment companies. Investors Syndicate of America, Inc., a subsidiary of IDS, issues face-amount certificates. IDS is the sole underwriter (distributor) for Investors Accumulation Plan (IAP) which offers long term investment programs in the form of periodic payment Plan Certificates for the accumulation of shares of Investors Stock Fund, Inc. Other subsidiaries include Investors Syndicate Title & Guaranty Company, an issuer of installment and fully paid participation certificates in the state of New York, Investors Syndicate Life Insurance and Annuity Company, IDS Securities Corp., (a member of the Pacific Coast Stock Exchange), and Investors Accumulation Plan, Inc., sponsor of IAP.

(i) **Keogh Act.** For those self-employed individuals who wish to purchase shares of the Fund in conjunction with the Self-Employed Individuals Tax Retirement Act of 1962 (the Keogh Act) there is available from the distributor a Custodial Account Agreement and a sample Profit-Sharing Plan. The Custodial Account Agreement provides that Investors Diversified Services, Inc. (which is also the distributor) furnishes custodial services as required by such Act. For such services it will receive a service fee of $10.00 for each calendar year or portion thereof payable by the Employer named in the Custodial Account Agreement. The amount of the service fee may change from time to time as a result of negotiations between Employer and Custodian. For further details, including the right to appoint a successor custodian, see the Custodial Account Agreement and Plan.

PEAT, MARWICK, MITCHELL & CO.

CERTIFIED PUBLIC ACCOUNTANTS

ACCOUNTANTS' REPORT

The Board of Directors and the Shareholders of Investors Mutual, Inc.:

We have examined the statement of net assets and capital stock and surplus, and the schedule of investments in securities of Investors Mutual, Inc. as of September 30, 1965 and the related statements of income, realized gain on investments, unrealized appreciation of investments, and surplus for the three years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at September 30, 1965 from the custodian depositary.

In our opinion, such financial statements and schedule present fairly the financial position of Investors Mutual, Inc. at September 30, 1965 and the results of its operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

PEAT, MARWICK, MITCHELL & CO.

Minneapolis, Minnesota
October 22, 1965

STATEMENT A

INVESTORS MUTUAL, INC.
Statement of Net Assets and Capital Stock and Surplus
September 30, 1965

	Cost		
Assets			
Investment in securities—at market value—Schedule 1:			
Common stocks:			
Affiliated company	$ 6,437,254	$ 6,435,000	
Other	1,155,094,066	1,841,006,260	
Preferred stocks	190,735,688	194,008,566	
Bonds	785,292,680	787,206,437	
Short-term notes	66,434,630	66,434,630	
Total	$2,203,994,318	2,895,090,893	
Cash in banks:			
On demand deposit		5,616,349	
Time deposits and interest thereon		29,697,091	
Receivable for investment securities sold		152,687	
Dividends and accrued interest receivable		15,670,655	
Total assets			$2,946,227,675
Liabilities (note 1)			
Payable for investment securities purchased		$ 2,843,466	
Payable for sales charges		1,723,567	
Accrued investment advisory and services fee		891,221	
Total liabilities			5,458,254
Net assets applicable to shares of outstanding capital stock			$2,940,769,421
Capital stock and surplus			
Capital stock—authorized 350,000,000 shares of $.50 par value per share; outstanding 239,926,645 shares		$ 119,963,322	
Surplus, per Statement D:			
Paid-in surplus		2,128,560,891	
Undistributed net income		1,544,158	
Undistributed net realized gain on investments (deficit)		(395,525)	
Total capital stock and surplus		$2,249,672,846	
Unrealized appreciation of investments, per Statement C		691,096,575	
Total—representing value of net assets applicable to outstanding capital stock			$2,940,769,421
Net asset value per share of outstanding capital stock			$ 12.257

See accompanying notes to financial statements.

STATEMENT B

INVESTORS MUTUAL, INC.
Statement of Income

Three years ended September 30, 1965	1965	1964	1963
Income			
Cash dividends on stocks:			
On investments in affiliates	$ 286,000	$ 286,000	$ 240,160
Other	66,593,518	61,102,653	55,808,336
Interest	40,735,267	30,987,347	24,293,534
Other income (note 2)	35,554	625,529	12,707
Total income	$ 107,650,339	$ 93,001,529	$ 80,354,737
Expenses (note 2)			
Investment advisory and services fee	$ 10,438,087	$ 10,431,136	$ 9,472,155
Custodian fee	—	—	181,375
Dividend checks and shareholders' notices and reports	—	—	122,969
Postage	—	—	158,676
Directors' fees	—	—	49,350
Audit fees	—	—	14,880
Other expenses	—	—	80
Total expenses	$ 10,438,087	$ 10,431,136	$ 9,999,485
Percentage of total expenses to total income	9.7%	11.2%	12.4%
Net income	$ 97,212,252	$ 82,570,393	$ 70,355,252
Net realized gain on investments, per Statement C	$ 67,227,940	$ 50,715,497	$ 37,625,137
Increase in unrealized appreciation of investments for the year, per Statement C	$ 6,402,016	$ 169,286,979	$ 244,457,679

See accompanying notes to financial statements.

STATEMENT C

INVESTORS MUTUAL, INC.
Statements of Realized Gain on Investments and Unrealized Appreciation of Investments

Three years ended September 30, 1965	1965	1964	1963
STATEMENT OF REALIZED GAIN ON INVESTMENTS			
Realized gain on sales of investments			
Proceeds from sales of investments:			
Securities of affiliates	$ —	$ —	$ 1,50
U.S. Government obligations	3,447,500	5,362,500	3,00
Short-term notes	538,196,102	371,523,770	267,40
Other securities	246,584,628	166,553,959	201,96
Total proceeds from sales of investments	$ 788,228,230	$ 543,440,229	$ 473,87
Cost of investments sold:			
Securities of affiliates	$ —	$ —	$ 3,42
U.S. Government obligations	3,447,500	5,362,500	3,00
Short-term notes	538,196,224	371,524,343	267,40
Other securities	198,052,516	115,837,889	163,52
Total cost of investments sold	$ 739,696,240	$ 492,724,732	$ 436,25
Realized gain (loss) on sales of investments:			
Securities of affiliates	$ —	$ —	$ 1,85
U.S. Government obligations	—	—	—
Short-term notes	(122)	(573)	
Other securities	48,532,112	50,716,070	36,43
Total realized gain on sales of investments	$ 48,531,990	$ 50,715,497	$ 37,62
Realized gain on exchanges of investments			
Value of investments acquired through exchanges	$ 37,113,078	$ 2,920,168	$ 9,46
Cost of investments released through exchanges	18,417,128	2,920,168	9,46
Realized gain on exchanges of investments	$ 18,695,950	$ —	$
Net realized gain on investments (note 3)	$ 67,227,940	$ 50,715,497	$ 37,62
STATEMENT OF UNREALIZED APPRECIATION OF INVESTMENTS			
Appreciation at beginning of the year	$ 684,694,559	$ 515,407,580	$ 270,94
Appreciation at end of the year	691,096,575	684,694,559	515,40
Increase for the year (note 1)	$ 6,402,016	$ 169,286,979	$ 244,45

See accompanying notes to financial statements.

STATEMENT D

INVESTORS MUTUAL, INC.
Surplus Statements

Three years ended September 30, 1965	1965	1964	1963
PAID-IN SURPLUS			
Balance at beginning of the year	$1,827,486,185	$1,567,434,783	$1,360,652,262
Addition			
Proceeds of sales 34,499,678, 30,253,304 and 25,469,412 shares of capital stock, respectively (note 2), less $.50 a share credited to capital stock	409,525,818	348,094,343	272,261,590
Total	$2,237,012,003	$1,915,529,126	$1,632,913,852
Deduction			
Redemption value of 9,107,757, 7,705,298 and 6,222,595 shares of capital stock, respectively, less $.50 a share charged to capital stock	108,451,112	88,042,941	65,479,069
Balance at end of the year	$2,128,560,891	$1,827,486,185	$1,567,434,783
UNDISTRIBUTED NET INCOME			
Balance at beginning of the year	$ 1,349,849	$ 1,155,071	$ 1,626,696
Net income for the year, per Statement B	97,212,252	82,570,393	70,355,252
Total	$ 98,562,101	$ 83,725,464	$ 71,981,948
Dividends paid in cash (note 4)	97,017,943	82,375,615	70,826,877
Balance at end of the year (note 1)	$ 1,544,158	$ 1,349,849	$ 1,155,071
UNDISTRIBUTED NET REALIZED GAIN ON INVESTMENTS (DEFICIT)			
Net realized gain on investments prior to beginning of the year	$ 310,299,396	$ 259,583,899	$ 221,958,762
Distributions to shareholders prior to beginning of the year	310,559,823	259,880,870	222,168,318
Balance at beginning of the year	$ (260,427)	$ (296,971)	$ (209,556)
Net realized gain on investments for the year, per Statement C	67,227,940	50,715,497	37,625,137
Total	$ 66,967,513	$ 50,418,526	$ 37,415,581
Dividends paid in cash (note 4)	67,363,038	50,678,953	37,712,552
Balance at end of the year	$ (395,525)	$ (260,427)	$ (296,971)

See accompanying notes to financial statements.

INVESTORS MUTUAL, INC.
Notes to Financial Statements

1. Income Taxes:

Since the Company met the requirements of sections 851-855 of the Internal Revenue Code for the three years ended September 30, 1965 and intends to continue to meet such requirements and to distribute taxable income to shareholders in amounts which will avoid or minimize income taxes, no provision is made for income taxes on undistributed net income or unrealized appreciation of investments.

2. Investment Advisory and Services Fee and Sales Charges:

Under the agreement in effect prior to April 6, 1963 the investment advisory and services fee payable to Investors Diversified Services, Inc. (IDS) was a quarterly fee of ⅛ of 1% of the value of the net assets of the Company. On April 6, 1963 (retroactive to January 22, 1963) a new agreement was entered into whereunder a reduced scale of fees on a graduated basis was made effective and IDS agreed to assume certain recurring expenses which were borne by the Company under the previous agreement. However, under the terms of a stipulation of settlement of then pending stockholders' derivative lawsuits, a portion of the fee reduction and the agreement by IDS to assume the additional expenses was not to become effective until final court approval of the settlement was obtained. Meanwhile, the amounts involved were deposited in escrow each month and invested in interest bearing securities. On July 2, 1964, the final court approval of the settlements having been obtained, the total amount then in escrow, $946,873, was received by the Company. A portion of this amount, $505,783, was applicable to the period January 22, 1963 to September 30, 1963, and this amount plus interest earned on the escrow deposit, $22,241, is included in "other income" for the year ended September 30, 1964, while the balance, $418,849, offset all expenses other than the investment advisory and services fee for the year ended September 30, 1964. If the April 6, 1963 agreement had been in effect for the full year ended September 30, 1963 net income of the Company would have been increased by $1,105,171 (including the $505,783 referred to above). On October 15, 1964, a new agreement became effective which provides for a revised graduated scale of fees. If this agreement had been in effect during the year ended September 30, 1964, the investment advisory and services fee would have been $9,236,000. The present agreement and fee scale are further described in this Prospectus under the heading "Remuneration and Fees".

Sales charges by IDS for its services as distributor of the shares of capital stock of Investors Mutual, Inc. during the years ended September 30, 1965, 1964 and 1963 aggregated $20,276,818, $16,634,666 and $12,506,777, respectively. Sales charges are not an expense of the Company. They are deducted from and are not included in the proceeds of sales of capital stock as shown in the accompanying statement of paid-in surplus. From such charges IDS pays commissions to salesmen, salaries and other sales expenses.

3. Cost of Securities Acquired and Basis of Determining Realized Gains:

The cost of securities acquired during the periods was as follows:

	United States Government	Short-term Notes	Other
Year ended September 30:			
1965	$3,447,500	$544,323,382	$470,145,089
1964	5,362,500	340,398,115	420,546,371
1963	3,000,000	302,399,840	322,852,301

Net realized gains were determined on the basis of identified costs for stocks and on the basis of first-in, first-out costs for bonds. Net realized gains on stocks and bonds determined on the basis of average costs for the years ended September 30, 1965, 1964 and 1963 would have been $67,298,528, $50,221,519 and $36,996,878, respectively.

4. Dividends to Shareholders:

The amounts per share of dividends paid during the periods were as follows:

Payable to shareholders of record on	From undistributed income	From net realized gain on investments
Year ended September 30, 1965:		
December 31, 1964	$0.0975	
March 25, 1965	.105	
June 24, 1965	.11	
September 29, 1965	.11625	$0.2875
Total	$0.42875	$0.2875
Year ended September 30, 1964:		
December 31, 1963	$0.0925	
March 25, 1964	.095	
June 25, 1964	.105	
September 24, 1964	.11375	$0.24125
Total	$0.40625	$0.24125
Year ended September 30, 1963:		
December 31, 1962	$0.0925	
March 28, 1963	.095	
June 27, 1963	.1025	
September 26, 1963	.10	$0.20
Total	$0.39	$0.20

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, September 30, 1965

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
COMMON STOCKS				
Aerospace				
128,300	Avco Corp.	$ 3,407,498	$ 2,822,600	.17%
135,000	Lockheed Aircraft Corp.	4,269,981	8,015,625	.28
93,500	North American Aviation, Inc.	4,282,782	5,025,625	.17
		$ 11,960,261	$ 15,863,850	.55%
Agricultural Machinery				
213,000	International Harvester Co.	$ 6,058,726	$ 8,147,250	.28%
Automotive				
618,000	Ford Motor Co.	$ 24,306,801	$ 34,530,750	1.19%
1,224,000	General Motors Corp.	86,131,280	128,520,000	4.44
		$ 110,438,081	$ 163,050,750	5.63%
Banks				
57,400	Bank of California, N. A.	$ 2,008,200	$ 3,271,800	.11%
303,100	Marine Midland Corp.	3,638,522	9,812,863	.34
88,800	National Bank of Detroit	4,370,258	5,827,500	.20
97,700	National City Bank of Cleveland	2,544,735	5,568,900	.19
175,300	Northwest Bancorporation	3,363,402	8,282,925	.29
		$ 15,925,117	$ 32,763,988	1.13%
Building Materials				
200,000	Armstrong Cork Co.	$ 4,717,570	$ 12,000,000	.41%
220,000	Ideal Cement Co.	6,424,099	4,152,500	.14
225,000	Lone Star Cement Co.	5,907,378	3,937,500	.14
200,000	Sherwin-Williams Co.	9,771,762	11,400,000	.39
125,000	U.S. Gypsum Co.	10,674,026	8,312,500	.29
		$ 37,494,835	$ 39,802,500	1.37%
Business Equipment				
244,800	Addressograph-Multigraph Corp.	$ 5,746,782	$ 13,953,600	.48%
173,100	International Business Machines Corp.	53,852,481	88,713,750	3.07
		$ 59,599,263	$ 102,667,350	3.55%
Chemicals				
372,300	Allied Chemical Corp.	$ 16,988,584	$ 18,149,625	.63%
22,500	duPont (E. I.) deNemours & Co.	4,996,617	5,411,250	.19
225,000	Hercules Powder Co.	4,728,169	9,000,000	.31
302,800	Monsanto Co.	12,014,580	25,359,500	.87
400,000	Union Carbide Corp.	24,436,083	26,700,000	.92
		$ 63,164,033	$ 84,620,375	2.92%
Containers—Metal and Glass				
200,000	Owens-Illinois, Inc.	$ 8,244,839	$ 11,600,000	.40%

SCHEDULE I

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

COMMON STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Drugs			
214,000	American Home Products Corp.	$ 1,077,724	$ 16,879,250	.59%
225,000	Pfizer (Chas.) & Co., Inc.	3,879,689	13,978,125	.48
		$ 4,957,413	$ 30,857,375	1.07%
	Electrical Equipment and Appliances			
320,000	Emerson Electric Co.	$ 11,642,206	$ 17,800,000	.61%
409,100	General Electric Co.	30,101,900	47,864,700	1.65
430,900	Westinghouse Electric Corp.	14,676,689	24,184,263	.84
200,000	Whirlpool Corp.	3,488,073	8,600,000	.30
		$ 59,908,868	$ 98,448,963	3.40%
	Electronics			
200,000	International Telephone & Telegraph Corp.	$ 8,443,207	$ 11,000,000	.38%
	Finance Companies			
217,900	Beneficial Finance Co.	$ 7,734,775	$ 13,182,950	.46%
300,000	C.I.T. Financial Corp.	12,155,658	9,412,500	.32
240,000	Commercial Credit Co.	10,688,323	8,400,000	.29
160,000	Household Finance Corp.	5,958,597	10,680,000	.37
		$ 36,537,353	$ 41,675,450	1.44%
	Foods and Beverages			
350,000	Borden Co.	$ 8,077,764	$ 15,750,000	.54%
377,000	California Packing Corp.	2,064,811	10,367,500	.36
240,000	Campbell Soup Co.	6,891,840	8,430,000	.29
130,000(e)	Continental Baking Co.	6,437,254	6,435,000	.22
167,000	General Foods Corp.	7,515,362	13,902,750	.48
212,000	Standard Brands, Inc.	11,062,665	16,430,000	.57
400,000	Unilever N. V. Fl. 20	14,532,642	14,900,000	.52
		$ 56,582,338	$ 86,215,250	2.98%
	Non-Ferrous Metals			
185,000	The International Nickel Co. of Canada, Ltd.	$ 7,379,183	$ 17,020,000	.59%
615,919(b,c)	Kaiser (Henry J.) & Co. (Warrants)	106,499	505,908	.02
100,000	Phelps Dodge Corp.	6,800,419	7,262,500	.25
		$ 14,286,101	$ 24,788,408	.86%
	Oil and Gas			
151,800	Cities Service Co.	$ 9,340,852	$ 13,054,800	.45%
250,000	Continental Oil Co. (Del.)	10,479,610	19,593,750	.68
294,300	Gulf Oil Corp.	7,297,171	17,142,975	.59
447,300	Marathon Oil Co.	16,447,739	27,564,863	.95
260,000	Phillips Petroleum Co.	8,677,739	14,267,500	.49
792,000	Royal Dutch Petroleum Co.	26,232,045	32,967,000	1.14
337,600	Shell Oil Co.	6,709,317	22,534,800	.78
490,000	Socony Mobil Oil Co., Inc.	33,723,123	43,120,000	1.49
449,200	Standard Oil Co. (Indiana)	10,199,697	21,505,450	.74
1,000,000	Standard Oil Co. (New Jersey)	59,116,918	78,500,000	2.71
787,500	Texaco, Inc.	22,813,050	65,953,125	2.28
		$ 211,037,261	$ 356,204,263	12.30%

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

COMMON STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Paper			
235,000	Container Corp. of America	$ 4,442,442	$ 7,990,000	.28%
170,000	Kimberly-Clark Corp.	7,268,116	8,861,250	.30
		$ 11,710,558	$ 16,851,250	.58%
	Railroads			
278,200	Denver & Rio Grande Western R.R. Co.	$ 4,872,281	$ 5,668,325	.20%
80,400	Norfolk & Western Ry. Co.	6,716,402	9,899,250	.34
200,000	Northern Pacific Ry. Co.	8,838,700	9,875,000	.34
150,000	Seaboard Air Line R.R. Co.	4,749,464	6,431,250	.23
384,800	Southern Pacific Co.	7,915,467	15,969,200	.55
160,000	Southern Ry. Co.	7,135,118	9,060,000	.31
115,000	Union Pacific R.R. Co.	3,223,035	4,729,375	.16
		$ 43,450,467	$ 61,632,400	2.13%
	Retail Trade			
277,400	Associated Dry Goods Corp.	$ 6,368,416	$ 16,009,200	.56%
268,000	Federated Dept. Stores, Inc.	4,689,621	17,855,500	.62
225,000	Great Atlantic & Pacific Tea Co.	9,246,482	8,521,875	.29
130,000	Macy (R.H.) & Co.	4,473,782	6,532,500	.23
275,000	Montgomery Ward & Co.	10,474,957	9,693,750	.33
210,000	J. C. Penney Co., Inc.	9,663,387	14,122,500	.49
250,000	Safeway Stores, Inc.	6,308,391	8,156,250	.28
181,300	Sears, Roebuck & Co.	12,000,026	11,625,863	.40
		$ 63,225,062	$ 92,597,438	3.20%
	Rubber			
214,000	Firestone Tire & Rubber Co.	$ 5,168,495	$ 9,416,000	.33%
448,000	Goodyear Tire & Rubber Co.	8,695,699	22,064,000	.76
		$ 13,864,194	$ 31,480,000	1.09%
	Steel			
385,600	Armco Steel Corp.	$ 21,598,041	$ 26,124,400	.90%
450,000	Bethlehem Steel Corp.	14,542,528	16,931,250	.58
275,000	Inland Steel Co.	10,888,049	12,650,000	.44
175,800	U.S. Steel Corp.	9,668,578	8,636,175	.30
		$ 56,697,196	$ 64,341,825	2.22%
	Textiles and Apparel			
341,000	Burlington Industries	$ 10,153,876	$ 13,171,125	.45%
	Utilities—Natural Gas			
380,000	Arkansas Louisiana Gas Co.	$ 3,990,000	$ 15,960,000	.55%
360,000	Columbia Gas System, Inc.	10,001,713	10,845,000	.38
189,000	Northern Natural Gas Co.	3,786,003	11,812,500	.41
231,300	Pacific Lighting Corp.	6,968,286	6,592,050	.23
412,700	Panhandle Eastern Pipe Line Co.	9,875,935	15,992,125	.55
211,000	Peoples Gas, Light & Coke Co.	5,456,988	9,811,500	.34
438,900	Transcontinental Gas Pipe Line Corp.	6,874,640	10,533,600	.36
		$ 46,953,565	$ 81,546,775	2.82%

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

COMMON STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Utilities—Power and Light			
170,000	American Electric Power Co.	$ 3,562,009	$ 7,310,000	.25%
210,000	Central & South West Corp.	5,888,720	10,080,000	.35
300,000	Cleveland Electric Illuminating Co.	7,442,313	13,012,500	.45
250,000	Columbus & Southern Ohio Electric Co.	4,773,730	10,718,750	.37
240,000	Consolidated Edison Co. of N.Y., Inc.	10,981,010	10,560,000	.36
220,500	Florida Power Corp.	2,766,004	10,032,750	.35
243,900	Houston Lighting & Power Co.	9,477,496	13,353,525	.46
200,000	Kansas Gas & Electric Co.	3,553,593	7,400,000	.26
226,000	Long Island Lighting Co.	3,837,908	7,514,500	.26
250,000	Middle South Utilities, Inc.	9,702,606	13,437,500	.47
300,000	Montana Power Co.	3,471,234	11,700,000	.40
192,600	New York State Electric & Gas Corp.	3,930,629	8,715,150	.30
400,000	Niagara Mohawk Power Co.	11,303,933	10,850,000	.37
287,500	Northern States Power Co. (Minn.)	4,989,411	10,637,500	.37
453,900	Oklahoma Gas & Electric Co.	5,999,111	13,276,575	.46
250,000	Public Service Electric & Gas Co.	6,862,176	10,000,000	.35
200,000	Southern Co.	4,056,032	13,950,000	.48
225,000	Texas Utilities Co.	3,886,725	14,596,875	.50
250,000	Toledo Edison Co.	4,489,197	9,593,750	.33
160,000	Virginia Electric & Power Co.	1,134,803	7,520,000	.26
		$ 112,108,640	$ 214,259,375	7.40%
	Utilities—Other			
377,000	American Telephone & Telegraph Co.	$ 20,268,815	$ 25,447,500	.88%
320,000	American Water Works Co.	1,634,217	6,000,000	.21
943,500	General Telephone and Electronics Corp.	16,316,444	41,749,875	1.44
		$ 38,219,476	$ 73,197,375	2.53%
	Not Classified			
210,100	Columbia Broadcasting Systems, Inc.	$ 4,958,860	$ 8,141,375	.28%
115,600	Eastman Kodak Co.	1,091,075	11,646,700	.40
174,000	General American Transportation Corp.	4,522,953	6,699,000	.23
400,000	Gillette Co.	6,035,841	15,550,000	.54
150,000	North American Car Corp.	765,309	4,200,000	.15
790,800	Other	43,136,552	44,420,850	1.53
		$ 60,510,590	$ 90,657,925	3.13%
	Total common stocks	$1,161,531,320	$1,847,441,260	63.81%
	SUMMARY—COMMON STOCKS			
	Affiliated company (note e)	$ 6,437,254	$ 6,435,000	.22%
	Other	1,155,094,066	1,841,006,260	63.59
	Total, as above	$1,161,531,320	$1,847,441,260	63.81%

SCHEDULE I

INVESTORS MUTUAL, INC.
Investments in Securities, Continued
(continued)

PREFERRED STOCKS

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Commercial Finance			
9,000(b)	Talcott (James), Inc., 6¼% Cum.	$ 450,000	$ 468,000	.02%
	Consumer Credit			
10,000(b)	American Credit Corp., 5.50% Cum., Series of 1955 S.F.	$ 250,000	$ 231,250	.01%
20,800(b)	American Credit Corp., 6¼% Cum.	520,000	546,000	.02
60,000(b)	American Credit Corp., 6⅜%	1,500,000	1,582,500	.05
6,700	American Investment Co., 5¼% Cum. Prior	670,000	683,400	.02
66,672(b)	Continental Commercial Corp., 6½% Cum.	666,720	683,388	.02
5,500(b)	General Acceptance Corp., $5.00 Cum.	544,500	539,688	.02
30,000(b)	General Acceptance Corp., 5.25% Series B. Cum.	3,000,000	2,970,000	.10
5,960(b)	General Acceptance Corp., $6.00 Series Voting Preference	596,000	598,980	.02
16,500(b)	General Acceptance Corp., 6¼% Cum. S.F.	1,650,000	1,732,500	.06
8,800(b)	Interstate Securities Co., 5¼% Cum.	880,000	866,800	.03
3,998(b)	Interstate Securities Co., 6½% Cum.	399,900	406,398	.02
10,000(b)	Pioneer Finance Co., 6¼% Cum.	1,000,000	1,046,250	.04
23,342(b)	Seaboard Finance Co., $5.00 S.F.	2,327,130	2,316,694	.08
8,572(b)	Securities Investment Co. of St. Louis, Mo., 5½% Cum. S.F.	857,200	848,628	.03
		$ 14,861,450	$ 15,072,476	.52%
	Industrial			
4,900	Allied Stores Corp., 4% Cum.	$ 448,185	$ 444,675	.02%
3,437(b)	American Machine & Foundry Co., 5% Cum.	343,700	350,574	.01
65,000	American Sugar Co., 5.44%	876,757	853,125	.03
11,700	Ashland Oil & Refining Co., $5.00 Cum.	1,115,115	1,158,300	.04
12,850	Carrier Corp., 4½% Cum.	472,535	628,044	.02
20,000	Celanese Corp. of America, 4½% Cum.	2,010,914	1,895,000	.06
7,320	Food Fair Stores, Inc., $4.20 Cum., Series 1951	732,000	710,040	.02
10,000	Glatfelter (P.H.) Co., 4⅜% Cum., Series of 1955	486,840	470,000	.02
7,925	Houdaille Industries, Inc., $2.25 Cum.	364,070	345,728	.01
22,000(b)	Hudson Pulp & Paper Corp., 5.70% Cum. Series C	550,000	550,000	.02
39,200(b)	Hudson Pulp & Paper Corp., 6¼% Cum. Series D	980,000	980,000	.03
5,000	Hunt Foods and Industries, Inc., 5% Cum. Series A	437,500	485,000	.02
5,000	Interchemical Corp., 4½% Cum.	439,964	497,500	.02
5,000	International Minerals & Chemicals Corp., 4% Cum.	439,751	437,500	.02
17,500	Kaiser Steel Corp., $1.46 Cum.	727,475	923,438	.03
40,000(b)	Kaiser Steel Corp., 5¾% Cum. Conv.	4,000,000	4,080,000	.14
13,402(b)	Libby, McNeill & Libby, 5¼% Cum.	1,340,200	1,340,200	.04
3,000(c)	Pittsburgh Steel Co., 5½% Cum. Prior 1st Series	237,862	252,000	.01
16,770(b)	Weatherhead Co., $5.75 Cum.	1,677,000	1,677,000	.06
		$ 17,679,868	$ 18,078,124	.62%

SCHEDULE 1

(continued)

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

PREFERRED STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Utilities—Power and Light			
6,580	Appalachian Power Co., 4½% Cum.	$ 735,859	$ 621,810	.02%
20,000	Arizona Public Service Co., $2.40 Cum. Series A	1,000,000	1,010,000	.03
13,364(b)	Arkansas-Missouri Power Co., 4.65% Cum.	1,336,400	1,323,036	.05
6,950(b)	Black Hills Power & Light Co., 4.75%	695,000	695,000	.02
6,533(b)	Black Hills Power & Light Co., 5.65% Cum.	653,300	692,498	.02
12,000	Carolina Power & Light Co., $5.00 Cum.	1,297,270	1,275,000	.04
1,185	Central Illinois Public Service Co., 4.92% Cum.	120,277	120,870	.01
13,600(b)	Central Louisiana Electric Co., 4.50% Cum., Series of 1955	1,360,000	1,315,800	.05
14,500(b)	Central Louisiana Electric Co., 5⅛% Series of 1958	1,450,000	1,520,688	.05
5,700	Columbus & Southern Ohio Electric Co., 4¼% Cum.	616,328	521,550	.02
20,000(b)	Consolidated Edison Co. of New York, Inc., 5¼% Cum.	2,000,000	2,145,000	.07
80,000(b)	Consolidated Edison Co. of New York, Inc., 5¾% Cum. Ser. A	8,000,000	8,620,000	.30
3,660	Empire District Electric Co., 4½% Cum.	369,000	362,340	.01
1,320	Empire District Electric Co., 5% Cum.	134,504	132,000	.01
20,000	Fall River Electric Light Co., 5.80% Cum.	1,990,000	2,164,200	.07
10,000(b)	Florida Power Corp., 4¾% Cum.	1,000,000	1,000,000	.03
15,000	Georgia Power Co., 4.92% Cum.	1,537,500	1,545,000	.05
9,073(b)	Green Mountain Power Corp., 5% Cum. Class A	907,300	920,910	.03
10,000(b)	Indianapolis Power & Light Co., 4.60% Cum.	1,000,000	990,000	.03
10,000(b)	Kansas Power & Light Co., 4½% Cum.	1,000,000	910,000	.03
9,800	Kentucky Utilities Co., 4¾% Cum.	989,800	967,750	.03
8,000	Long Island Lighting Co., 5% Cum. Series B	800,000	824,000	.03
6,000	Louisiana Power & Light Co., 4.96% Cum.	601,200	615,000	.02
10,000	Louisiana Power & Light Co., 5.16% Cum.	985,973	1,042,500	.04
10,100	Montana-Dakota Utilities Co., 4.50% Cum.	964,082	939,300	.03
11,300	Montana-Dakota Utilities Co., 4.70% Cum.	1,100,798	1,118,700	.04
16,300	Narragansett Electric Co., 4.64% Cum.	833,338	815,000	.03
7,500	New England Power Co., 4.60% Cum.	743,003	735,000	.03
5,075	New Orleans Public Service, Inc., 4¾% Cum.	542,271	504,963	.02
6,340	Northern Indiana Public Service Co., 4¼% Cum.	582,534	564,260	.02
10,000	Northern States Power Co., (Minn.) $4.16 Cum.	987,705	912,500	.03
9,100(b)	Northwestern Public Service Co., 5¼% Cum.	910,000	937,300	.03
10,000(b)	Orange & Rockland Utilities, Inc., 4.75% Cum. Series B	1,000,000	1,000,000	.03
7,684	Otter Tail Power Co., $4.40 Cum.	760,788	722,296	.03
73,850	Pacific Gas & Electric Co., 5% Cum. Redeemable 1st Plain	1,956,759	1,947,794	.07
16,150	Pacific Gas & Electric Co., 5% Cum. Redeemable 1st Series A	466,482	429,994	.01
6,508	Potomac Edison Co., 4.70% Cum. B	683,653	644,292	.02
20,000	Potomac Electric Power Co., $2.46 Cum., Series of 1958	1,000,000	1,025,000	.03
7,505	Public Service Co. of New Hampshire, 3.35% Cum.	533,135	529,103	.02
15,000	Public Service Co., of New Hampshire, 4.50% Div. Series Cum.	1,500,000	1,410,000	.05
5,000	Rochester Gas & Electric Corp., 4¼% Cum., Series I	500,000	497,500	.02
4,500	San Diego Gas & Electric Co., 5% Cum.	107,875	94,500	.01
16,463	South Carolina Electric & Gas Co., 4.50% Cum.	805,255	775,819	.03
4,400	South Carolina Electric & Gas Co., 5% Cum.	228,492	228,800	.01
1,670	Texas Electric Service Co., $4.56 Cum.	184,535	161,155	.01

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

PREFERRED STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Utilities—Power and Light, continued			
7,400	Texas Power & Light Co., $4.56 Cum.	$ 832,834	$ 712,250	.03%
8,800	Texas Power & Light Co., $4.84 Cum.	878,152	893,200	.03
9,000	Wisconsin Power & Light Co., 4.76% Cum.	900,000	909,000	.03
		$ 49,581,402	$ 49,842,678	1.72%
	Utilities—Natural Gas			
4,300(b)	Atlanta Gas Light Co., 4.60% Cum.	$ 430,000	$ 408,500	.01%
12,600	Colorado Interstate Gas Co., 5% Series Cum.	1,194,773	1,272,600	.04
25,000(b)	El Paso Natural Gas Co., 4⅞% Conv. 2nd	2,500,000	2,437,500	.08
7,423	El Paso Natural Gas Co., 5.36% Cum.	742,300	749,723	.03
5,472	El Paso Natural Gas Co., 5.50% Cum.	558,144	558,144	.02
24,800	El Paso Natural Gas Co., 5.50% Cum., 1956 Series	2,463,132	2,560,600	.09
6,800	El Paso Natural Gas Co., 5.65% Cum.	680,000	700,400	.02
18,355	El Paso Natural Gas Co., 6.40% Cum., 2nd Series 1957	1,835,500	1,927,275	.07
6,500(b)	Kansas-Nebraska Natural Gas Co., Inc., 5.65% Series Cum.	650,000	674,000	.02
52,300	Laclede Gas Co., 5% Cum. Series B	1,307,500	1,327,113	.05
78,374(b)	Lowell Gas Co., 5¼% Cum.	1,959,350	2,008,334	.07
29,128(b)	Lowell Gas Co., 5.40% Cum.	728,200	757,328	.03
7,000(b)	Michigan Gas Utilities Co., 5% Series A Cum.	700,000	700,000	.02
20,000	Natural Gas Pipeline Co. of America, 5½%	2,000,000	2,111,651	.07
9,600	Northern Illinois Gas Co., 5% Cum.	969,600	996,000	.03
3,625	Northern Natural Gas Co., 5½% Cum.	362,500	371,641	.01
46,259	Northern Natural Gas Co., 5.60% Cum.	4,625,900	4,875,417	.17
17,100	Northern Natural Gas Co., 5.80% Cum.	1,710,000	1,831,003	.06
7,608	Oklahoma Natural Gas Co., 4¾% Cum. A	417,264	378,498	.01
18,400	Pacific Lighting Corp., $4.40 Cum.	1,849,481	1,720,400	.06
40,000(b)	Piedmont Natural Gas Co., 5%	4,000,000	4,000,000	.14
18,000(b)	Piedmont Natural Gas Co., 5.50% Series Cum.	1,800,000	1,867,500	.06
2,388	Southern Union Gas Co., 4¼% Cum.	216,944	212,532	.01
4,315	Southern Union Gas Co., 5% Cum.	431,500	427,185	.02
28,300(b)	Southern Union Gas Co., 5.05% Cum.	2,830,000	2,921,975	.10
7,200	Southern Union Gas Co., 5.35% Cum.	720,000	734,400	.03
23,000(b)	Tenneco Corp., 6% 1st	2,300,000	2,394,875	.08
13,800	Tennessee Gas Transmission Co., 4.60% Cum.	1,458,340	1,359,300	.05
10,000	Tennessee Gas Transmission Co., 4.64% Cum.	1,031,000	985,000	.03
2,400	Tennessee Gas Transmission Co., 4.65% Cum.	228,177	236,400	.01
25,575	Tennessee Gas Transmission Co., 4.72% Cum. Conv. 2nd	2,557,500	2,506,350	.09
16,000	Tennessee Gas Transmission Co., 5.04% Cum.	1,600,000	1,616,000	.06
27,100	Tennessee Gas Transmission Co., 5.08% Cum.	2,710,000	2,737,100	.09
9,300	Tennessee Gas Transmission Co., 5.12% Cum.	933,488	939,300	.03
47,000	Tennessee Gas Transmission Co., 5.24% Cum.	4,700,000	4,770,500	.16
9,000	Tennessee Gas Transmission Co., 5.25% Cum.	900,000	909,000	.03
20,000(b)	Texas Eastern Transmission Corp., 5% 1964 Series	2,000,000	2,000,000	.07
60,000(b)	Texas Eastern Transmission Corp., 5% Cum., 2nd 1964 Series	6,000,000	6,000,000	.21
30,000	Texas Eastern Transmission Corp., 5.52%	3,000,000	3,090,000	.11
49,200	Texas Eastern Transmission Corp., 5.60% Series Cum.	4,916,600	5,067,600	.18

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

PREFERRED STOCKS (Continued)

SHARES	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Utilities—Natural Gas, continued			
9,700	Texas Eastern Transmission Corp., 6.70% Series Cum.	$ 970,000	$ 1,028,200	.04%
6,614	Texas Gas Transmission Corp., 5.40% Cum.	661,400	676,771	.02
16,600	Transcontinental Gas Pipe Line Corp., $4.90 Cum.	1,654,375	1,655,850	.06
80,000(b)	Transcontinental Gas Pipe Line Corp., $5.00 Cum.	8,000,000	8,000,000	.28
20,000	Transcontinental Gas Pipe Line Corp., $5.26 Cum.	2,000,000	2,060,000	.07
71,162	Transcontinental Gas Pipe Line Corp., $5.60 Cum.	7,117,500	7,454,220	.26
2,500	Washington Gas Light Co., $4.25 Cum.	253,012	220,000	.01
9,333(b)	Western Gas Service Co., 6% Cum. Series A	933,300	977,632	.03
		$ 93,606,780	$ 95,213,817	3.29%
	Utilities—Communications and Water			
8,400(b)	Alexandria Water Co., 5.05% Cum.	$ 840,000	$ 873,600	.03%
28,000(b)	California Interstate Telephone Co., 5.25% Series Cum.	560,000	574,000	.02
7,125(b)	Commonwealth Water Co., 5¼% 1st Series of 1958	712,500	749,906	.03
20,000(b)	General Waterworks Corp., 6% Cum.	2,000,000	2,095,000	.07
12,900(b)	Hackensack Water Co., 5% Series Cum.	1,290,000	1,354,500	.05
5,800	Pennsylvania Gas & Water Co., 4.10% Cum.	481,971	501,700	.02
13,000(b)	St. Louis County Water Co., 4.50% Cum. Series A	1,300,000	1,170,000	.04
7,481(b)	South Pittsburgh Water Co., 4.70% Cum.	748,100	725,657	.02
8,800(b)	South Pittsburgh Water Co., 5¼% Cum.	880,000	926,200	.03
		$ 8,812,571	$ 8,970,563	.31%
	Railroads			
10,000	Carolina, Clinchfield and Ohio Ry., 5% Gtd.	$ 958,222	$ 1,047,500	.04%
12,000	Cleveland & Pittsburgh R. R. Co., 7% Reg. Gtd.	829,576	861,000	.03
31,800	Kansas City Southern Industries, Inc., 4% Non-Cum.	571,372	667,800	.02
79,500	Southern Ry. Co., 5% Non-Cum.	1,425,619	1,599,938	.05
5,800	Wabash R. R. Co., 4½% Cum.	400,383	548,825	.02
13,508	Wheeling & Lake Erie Ry. Co., $5.75 Gtd.	1,558,445	1,637,845	.06
		$ 5,743,617	$ 6,362,908	.22%
	Total preferred stocks	$ 190,735,688	$ 194,008,566	6.70%

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
BONDS				
	Commercial Finance			
$ 900,000(b)	A. J. Armstrong Co., Inc., 5⅜% Sub. Notes, 2/1/74	$ 900,000	$ 909,000	.03%
1,700,000(b)	A. J. Armstrong Co., Inc., 5¾% Jr. Sub. Notes, 11/1/77	1,700,000	1,712,750	.06
1,200,000(b)	A. J. Armstrong Co., Inc., 6⅛% Jr. Sub. Notes, 3/1/74	1,200,000	1,225,500	.04
700,000(b)	Civic Finance Corp., 6½% Senior Note, 5/1/72	703,500	731,500	.03
2,000,000(b)	Commercial Discount Corp., 5½% Sr. Note, 12/1/75	2,000,000	2,045,000	.07
1,200,000(b)	Commercial Discount Corp., 5⅜% Jr. Sub. Note, 3/1/75	1,200,000	1,200,000	.04
3,500,000(b)	Crompton-Richmond Co., Inc. Factors, 5½% Sr. Sub. Notes, 8/1/78	3,500,000	3,500,000	.12
1,920,000(b)	Heller (Walter E.) & Co., 4⅛% Sr. Notes, 7/1/71	1,920,000	1,891,200	.07
3,250,000(b)	Heller (Walter E.) & Co., 4⅛% Sr. Notes, 4/1/79	3,250,000	3,221,563	.11
540,000(b)	Heller (Walter E.) & Co., 5% Jr. Sub. Notes, 4/1/71	540,000	533,925	.02
640,000(b)	Heller (Walter E.) & Co., 5¼% Sr. Deb., 4/1/73	640,000	646,400	.02
1,575,000(b)	Heller (Walter E.) & Co., 5¼% Sub. Notes, 5/1/76	1,575,000	1,575,000	.05
2,000,000(b)	Heller (Walter E.) & Co., 5¼% Sub. Notes, 4/1/77	2,000,000	2,000,000	.07
2,700,000(b)	Heller (Walter E.) & Co., 5⅛% Sr. Deb., 2/1/74	2,700,000	2,743,875	.10
1,125,000(b)	Heller (Walter E.) & Co., 5⅜% Jr. Sub. Notes, 5/1/76	1,125,000	1,132,031	.04
1,750,000(b)	Heller (Walter E.) & Co., 5⅜% Jr. Sub. Notes, 4/1/77	1,750,000	1,763,125	.06
320,000(b)	Heller (Walter E.) & Co., 5¼% Sub. Notes, 4/1/73	320,000	326,000	.01
3,500,000(b)	Mack Financial Corp., 5¾% Prom. Note, 6/1/72	3,500,000	3,574,375	.12
3,500,000(b)	Mercantile Financial Corp., 5% Sr. Notes, 6/1/72	3,500,000	3,434,375	.12
1,000,000(b)	Mercantile Financial Corp., 5⅜% Sr. Sub. Notes, 2/1/80	1,000,000	981,250	.03
900,000(b)	Mercantile Financial Corp., 5¼% Sr. Notes, 10/1/73	900,000	913,500	.03
150,000(b)	Talcott (James), Inc., 5¼% Cap. Notes Series A, 4/1/66	150,000	149,813	.01
1,500,000(b)	Talcott (James), Inc., 5.20% Sub. Notes, 4/1/77	1,500,000	1,496,250	.05
1,750,000(b)	Talcott (James), Inc., 5½% Cap. Note, 4/1/77	1,750,000	1,750,000	.06
2,700,000(b)	Talcott (James), Inc., 5⅜% Cap. Notes, 12/1/75	2,673,000	2,750,625	.10
2,500,000(b)	Talcott (James), Inc., 5⅜% Cap. Notes, 10/1/76	2,500,000	2,550,000	.09
400,000(b)	Talcott (James), Inc., 6% Cap. Notes Series B, 4/1/69	400,000	405,500	.01
		$ 44,896,500	$ 45,162,557	1.56%
	Consumer Credit			
$ 750,000(b)	Acceptance Finance Corp., 6% Jr. Sub. Note, 1/15/78	$ 750,000	$ 750,000	.03%
600,000(b)	American Credit Corp., 5% Prom. Note, 7/1/71	600,000	600,000	.02
1,500,000(b)	American Credit Corp., 5½% Jr. Sub. Notes, 4/1/78	1,500,000	1,488,750	.05
1,050,000(b)	American Credit Corp., 5.90% Cap. Deb. Series D, 8/1/72	1,050,000	1,060,500	.04
100,000(b)	American Credit Corp., 6% Cap. Deb. B, 8/1/70	100,000	100,500	.01
214,000(b)	American Investment Co., 3⅞% Notes, 10/1/66	211,860	212,395	.01
3,400,000(b)	American Investment Co., 4¼% Prom. Notes, 6/1/71	3,400,000	3,344,750	.12
2,000,000(b)	American Investment Co., 5% Sub. Note, 6/1/84	2,000,000	1,975,000	.07
2,250,000(b)	American Investment Co., 5¼% Cap. Notes, 6/1/84	2,250,000	2,221,875	.08

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Consumer Credit, continued			
$1,050,000(b)	American Investment Co., 5¾% Sub. Notes, 10/1/71	$ 1,050,000	$ 1,057,875	.04%
3,000,000(b)	American Investment Co., 5¾% Cap. Notes, 10/1/81	3,000,000	3,093,750	.11
1,000,000(b)	Associates Investment Co., 4¼% S. F. Prom. Note, 1/15/67	1,000,000	1,002,500	.03
2,700,000(b)	Atlas Financial Corp., 6% Serial Sub. Note, 6/1/66-74	2,700,000	2,713,500	.09
1,800,000(b)	Atlas Financial Corp., 6½% Serial Jr. Sub. Note, 6/1/66-74	1,800,000	1,809,000	.06
1,380,000(b)	Avco Delta Corp., 6⅛% Sr. Note Ser. F, 9/15/71	1,380,000	1,417,950	.05
200,000(b)	Bankers Investment Co., 5¾% Cap. Deb. Ser. A, 2/1/67	200,000	199,500	.01
700,000(b)	Bankers Investment Co., 6% Senior Notes, 12/1/71	700,000	717,500	.02
350,000(b)	Bankers Investment Co., 6¼% Senior Notes, 5/1/72	346,500	360,500	.01
5,000,000(b)	Beneficial Finance Co., 5⅜% Sub. Notes, 7/15/80	5,000,000	5,300,000	.18
5,000,000(b)	Capital Finance Corp., 4¾% Sr. Prom. Note, 5/1/72	5,000,000	4,968,750	.17
600,000(b)	Dial Finance Co., 5% Sr. Notes, 12/1/66	600,000	602,250	.02
1,000,000	Dial Finance Co., 6% Cap. Deb., 4/1/81	1,000,000	1,022,500	.04
1,500,000(b)	Family Finance Corp., 4½% Sr. Notes, 9/1/71	1,500,000	1,481,250	.05
3,000,000(b)	Family Finance Corp., 4¾% Sr. Sub. Notes, 5/1/83	3,000,000	2,880,000	.10
1,500,000(b)	Family Finance Corp., 5% Sr. Sub. Notes, 9/1/71	1,500,000	1,494,375	.05
1,200,000(b)	Family Finance Corp., 5½% Sr. Sub. Notes, 9/1/67	1,200,000	1,210,500	.04
2,700,000(b)	Family Finance Corp., 5½% Jr. Sub. Notes, 6/1/81	2,700,000	2,676,375	.09
5,000,000(b)	Federal Services Finance Corp., 5⅛% Senior Notes, 9/1/79	5,000,000	4,912,500	.17
170,000(b)	Fidelity Acceptance Corp., 6% Sr. Deb. Series C, 9/1/67	170,000	172,338	.01
5,000,000(b)	General Acceptance Corp., 4¾% Sr. Note, 12/1/68	5,000,000	4,987,500	.17
1,892,000	General Acceptance Corp., 4¾% Sr. Deb., 8/1/71	1,881,972	1,854,160	.06
1,000,000(b)	General Acceptance Corp., 5¼% Sr. Notes, 3/1/77	1,000,000	1,015,000	.04
3,000,000	General Acceptance Corp., 5½% Sr. Deb., 10/1/76	3,000,000	2,985,000	.10
3,550,000(b)	General Acceptance Corp., 5½% Jr. Sub. Notes, 8/1/79	3,550,000	3,518,938	.12
4,000,000(b)	General Acceptance Corp., 5⅜% Sr. Sub. Notes, 3/1/77	4,000,000	4,085,000	.14
851,000	General Acceptance Corp., 6% Sr. Deb., 1/1/80	851,000	859,510	.03
1,550,000(b)	General Finance Corp., 5¼% Cap. Notes, 10/1/83	1,550,000	1,520,938	.05
1,000,000(b)	General Finance Corp., 5¾% S.F. Cap. Notes, 12/1/65-80	971,100	1,016,250	.04
2,000,000(b)	Industrial Credit Co., St. Paul, Minn., 5% Sr. Note, 6/1/75	2,000,000	2,000,000	.07
2,000,000(b)	Industrial Finance & Thrift Corp., 5% Sr. Notes, 10/31/75	2,000,000	1,975,000	.07
1,906,300(b)	Industrial Finance & Thrift Corp., 5¾% Sr. Sub. Note, 9/30/77	1,906,300	1,918,214	.07
1,000,000(b)	Interstate Finance Corp., 6⅛% Jr. Sub. Note, 12/1/76	1,000,000	1,036,250	.04
664,000(b)	Interstate Securities Co., 6¼% Jr. Sub. Note, 7/1/73	664,000	667,320	.02
400,000(b)	ITT Aetna Finance Co., 5¼% Jr. Sub. Deb. Series A, 4/1/69	400,000	395,500	.01
1,500,000(b)	ITT Aetna Finance Co., 5½% Sr. S.F. Note, 11/1/66-75	1,500,000	1,535,625	.05
550,000(b)	Laurentide Finance Corp. of California, 5¼% Sr. Sub. Notes, 11/1/79	550,000	545,188	.02

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Consumer Credit, continued			
$ 400,000(b)	Laurentide Finance Corp. of California, 5⅜% Sr. Notes, 2/1/67	$ 400,000	$ 402,000	.01%
160,000(b)	Laurentide Finance Corp. of California, 5½% Ser. B, S.F. Deb., 8/1/66	160,000	160,400	.01
600,000(b)	Laurentide Finance Corp. of California, 5½% Jr. Sub. Notes, 11/1/79	600,000	594,750	.02
1,400,000(b)	Laurentide Finance Corp. of California, 6% Senior Notes, 5/1/72	1,400,000	1,443,750	.05
1,300,000(b)	Laurentide Finance Corp. of California, 6% Jr. Sub. Notes, 12/15/74	1,300,000	1,321,125	.05
7,000,000(b)	Liberty Loan Corp., 4⅛% Sr. Note, 11/15/68	7,000,000	6,982,500	.24
2,407,000(b)	Liberty Loan Corp., 5⅛% Sr. Note, 10/1/70	2,407,000	2,449,123	.08
2,325,000(b)	Modern Homes Finance Co., 6¼% Coll. Tr. Deb. Ser. A, 4/1/74	2,325,000	2,325,000	.08
150,000(b)	Mossler Acceptance Co., 4¾% Sub. Notes, 11/1/66	150,000	149,250	.01
2,000,000(b)	Murphy Finance Co., 5% Sr. Notes, 3/1/76	2,000,000	1,987,500	.07
1,000,000(b)	Murphy Finance Co., 5¾% Jr. Sub. Notes, 7/1/75	1,000,000	1,000,000	.03
3,000,000(b)	Pacific Finance Corp., 4⅜% Deb., 10/1/71, 1957 Issue	2,960,100	2,940,000	.10
4,000,000(b)	Pacific Finance Corp., 5½% Cap. Deb., 7/1/79	4,000,000	3,950,000	.14
6,000,000(b)	Pacific Finance Corp., 5¾% Cap. Deb., 12/1/81	6,000,000	6,052,500	.21
349,000(b)	Personal Industrial Bankers, Inc., 6% Sr. Deb. Ser. A, 8/1/68	349,000	348,128	.01
150,000(b)	Personal Industrial Bankers, Inc., 7% Sub. Deb., A, 8/1/68	150,000	151,125	.01
1,440,000(b)	Pioneer Finance Co., 5¼% Sr. S.F. Deb., 12/1/65-72	1,440,000	1,465,200	.05
1,620,000(b)	Pioneer Finance Co., 6½% Sub. Deb. Ser. E. 11/1/73	1,620,000	1,644,300	.06
1,500,000(b)	Public Loan Co., Inc., 4⅞% Sr. Notes, 8/28/68	1,500,000	1,496,250	.05
2,100,000(b)	Ritter Finance Co., 5½% Sr. Note, 8/1/72	2,100,000	2,128,875	.07
1,000,000(b)	Seaboard Finance Co., 5⅛% S.F. Notes, 12/1/66	1,000,000	1,003,750	.03
1,750,000(b)	Seaboard Finance Co., 6% Cap. Notes, 9/1/71	1,741,720	1,778,438	.06
1,000,000(b)	Seaboard Finance Co., 6⅛% Cap. Notes, 1/1/81	1,000,000	1,041,250	.04
900,000(b)	Seaboard Finance Co., 6½% Cap. Notes, 8/1/72	900,000	923,625	.03
1,558,000(b)	Securities Investment Co. of St. Louis, Mo., 4¼% S.F. Deb., 6/1/68	1,558,000	1,526,840	.05
5,000,000(b)	Southwestern Investment Co., 4¼% Sr. Notes, 5/1/72	5,000,000	4,975,000	.17
1,250,000(b)	Southwestern Investment Co., 5⅛% Sr. Sub. Notes, 5/1/79	1,250,000	1,250,000	.04
1,466,000(b)	State Loan & Finance Corp., 4¾% Prom. Note, 6/1/71	1,466,000	1,466,000	.05
2,000,000	State Loan & Finance Corp., 5¼% Cap. Deb., 6/1/83	1,939,800	1,900,000	.07
1,875,000(b)	State Loan & Finance Corp., 5½% Prom. Note, 4/1/72	1,875,000	1,926,563	.07
375,000(b)	Stephenson Finance Co., Inc., 5% Sub. Deb. Series A, 8/1/70	375,000	366,563	.01
338,000(b)	Stephenson Finance Co., Inc., 6¼% Sub. Deb. Ser. B, 9/1/74	338,000	343,493	.01
1,000,000(b)	Sun Finance & Loan Co., 5⅜% Sr. Sub. Notes, 12/1/78	1,000,000	1,000,000	.03
1,890,000(b)	Sun Finance & Loan Co., 6¼% Sub. Notes, 12/1/71	1,890,000	1,941,975	.07
3,000,000(b)	Texas Consumers Finance Corp., 5¾% Sr. Notes, 12/1/75	3,000,000	3,037,500	.10
200,000(b)	Thorp Finance Corp., 5% Cap. Notes Ser. A, 7/1/67	198,000	198,250	.01

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Consumer Credit, continued			
$1,000,000(b)	Thorp Finance Corp., 5¼% Sub. Notes, 11/1/78	$ 1,000,000	$ 982,500	.03%
400,000(b)	Thorp Finance Corp., 5½% Prom. Note, 3/1/67	400,000	402,500	.01
200,000(b)	Thorp Finance Corp., 5½% Cap. Notes Series B, 7/1/67	200,000	199,750	.01
875,000(b)	Thorp Finance Corp., 5¾% Sub. Notes, 5/1/71	875,000	885,938	.03
		$ 148,400,352	$ 148,903,787	5.14%
	Other Financial			
$2,000,000(b)	First Surety Corp., 5½% Sr. Notes, 6/1/75	$ 2,000,000	$ 1,950,000	.07%
1,600,000	Nacional Financiera S.A. Discount Note, 1/21/66-67	1,483,417	1,483,417	.05
2,250,000(b)	Northwestern Bank (North Wilkesboro, N.D.), 5% Sub. Note, 5/1/84	2,250,000	2,202,188	.08
500,000(b)	Ridgely, Inc., 4¾% Sec. Note, 5/1/66	500,000	500,000	.02
4,500,000(b)	United Financial Corp. of Calif., 5⅓% Sr. Notes, 4/1/75	4,500,000	4,449,375	.15
		$ 10,733,417	$ 10,584,980	.37%
	Industrial			
$1,336,000(b)	ACF Industries, Inc., 4¼% Equip. Tr., 12/15/65-68	$ 1,336,000	$ 1,332,660	.05%
6,720,000(b)	ACF Industries, Inc., 4.70% Equip. Tr., 6/15/66-79	6,720,000	6,636,000	.23
5,633,334(b)	Admiral Corp., 5.40% Prom. Note, 12/1/77	5,633,334	5,605,167	.19
2,750,000(b)	Admiral Corp., 5.40% Prom. Note, 9/30/79	2,722,142	2,732,813	.09
1,455,000(b)	Allied Supermarkets, Inc., 4¾% Prom. Note, 11/1/71	1,416,879	1,424,613	.05
822,000(b)	Allied Supermarkets, Inc., 5¼% Prom. Note, 11/2/71	822,000	819,975	.03
1,060,000	American Sugar Co., 5.30% Sub. Deb., 4/2/93	1,123,600	1,081,200	.04
2,320,000	Automatic Retailers of America, Inc., 4⅜% Sub. Deb., 3/1/83	2,151,228	2,180,800	.08
343,000(b)	Blackships, Inc., 5% Mtge. Bonds Series E, 10/1/73	343,000	345,490	.01
468,000(b)	Blackships, Inc., 5% Mtge. Bonds Series F, 10/1/73	468,000	471,398	.02
530,000(b)	Blackships, Inc., 5% Mtge. Bonds Series G, 7/1/74	530,000	533,848	.02
2,500,000(b)	Brunswick of Canada Ltd., 7⅛% Coll. Tr., 12/1/70	2,500,000	2,500,000	.09
11,700,000(b)	Celanese Corp. of America, 4¾% Prom. Note, 4/1/90	11,700,000	11,583,000	.40
5,000,000(b)	Coastal States Gas Producing Co., 5% 1st Mtge. Ser. B, 4/15/85	5,000,000	5,000,000	.17
1,688,000(b)	Colorado Fuel & Iron Corp., 5¾% 1st Mtge. & Coll. Trust Bonds, S.F. Series, 8/1/79	1,688,000	1,647,910	.07
9,200,000(b)	Cowles Magazine & Broadcasting, Inc., 4⅞% Prom. Note, 5/1/85	9,200,000	9,200,000	.32
3,000,000(b)	Diners Club, Inc., 5¼% Sr. Sub. Notes, 4/1/76	2,963,076	2,925,000	.10
10,000,000(b)	Dow Chemical Co., 4½% 25 Year Notes, 1/15/90	10,000,000	9,887,500	.34
1,218,000(b)	Home Oil Co., Ltd., 5½% Sec. Notes Series B, 9/1/71, with Warrants	1,218,000	1,202,775	.04
1,216,000(b)	Kaiser Aluminum & Chemical Corp., 4.93% 1st Mtge., 1/1/76	1,216,000	1,203,840	.04
1,400,000(b)	Kaiser Aluminum & Chemical Corp., 5¼% 1st Mtge., 11/1/94	1,389,528	1,359,750	.05
2,000,000(b)	Kaiser Cement & Gypsum Corp., 5⅛% Prom. Note, 12/1/81	2,000,000	2,000,000	.07
3,850,000(b)	Kaiser Steel Corp., 4¼% 1st Mtge., 5/1/76	3,850,000	3,633,438	.13
1,375,000(b)	Kaiser Steel Corp., 5½% 1st Mtge., 11/1/84	1,375,000	1,344,063	.05
5,760,000(b)	Kaiser Steel Corp., 5⅛% Prom. Note, 5/1/81	5,760,000	5,760,000	.20
3,450,250(b)	Mack Trucks, Inc., 5⅛% Sr. Notes, 5/1/76	3,406,432	3,471,814	.12

SCHEDULE 1

IVESTORS MUTUAL, INC.
vestments in Securities, Continued

(continued)

ONDS (Continued)

INCIPAL OUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	dustrial, continued			
605,000(b)	Montgomery Ward & Co., Inc., 4⅞% Deb. 8/1/90	$ 9,570,422	$ 9,701,050	.33%
945,000(b)	North American Car Corp., 5⅛% Sub. S.F. Notes, 2/28/84	1,945,000	1,906,100	.07
256,415(b)	Panketrol, Ltd., 6¼% 1st Mtge. C. Gtd., 5/1/82	2,995,902	3,288,979	.11
418,000(b)	Peavey Co., 5¾% 1st Mtge., 6/30/73	2,418,000	2,436,135	.08
000,000(b)	Petroleos Mexicanos, 7% Coll. Notes, 8/1/72	9,930,000	10,000,000	.34
000,000(b)	Philadelphia & Reading Corp., 5⅜% Prom. Note, 3/31/82	10,000,000	10,125,000	.35
462,000(b)	Pittston Co. (The), 6⅛% 1st Mtge. S.F. Notes, 10/1/82	1,462,000	1,527,205	.05
018,000(b)	St. Lawrence Corp., Ltd., 1st Mtge., 4¾% S.F. Series B, 4/15/72	1,018,000	987,460	.03
000,000(b)	Siemens & Halske A.G., 5¾% Prom. Note, 5/1/77	9,825,000	10,000,000	.34
394,000(b)	Southwestern Nitrochemical Corp., 5¾% 1st Mtge., 9/1/72	394,000	394,000	.01
933,000(b)	Southwestern Nitrochemical Corp., 7% 1st Mtge., 9/1/72	933,000	960,990	.03
256,000(b)	Suburban Propane Gas Corp., 5% S.F. Deb., 1/1/69	256,000	256,000	.01
257,000(b)	Suburban Propane Gas Corp., 5⅛% S.F. Deb., 8/1/68	257,000	258,606	.01
500,000(b)	Texaco, Inc., 4½% Note, 12/15/89	6,500,000	6,418,750	.22
000,000(b)	United Airlines, Inc., 5% Notes, 5/1/85	25,000,000	25,000,000	.86
000,000	Victor Comptometer Corp., 4⅞% S.F. Deb., 4/15/88	2,988,750	2,880,000	.10
000,000(b)	Jim Walter Corp., 5¾% Senior Sub. Note, 6/1/80	10,000,000	9,912,500	.34
100,000	Western Union Telegraph Co., 5% S.F. Deb., 3/1/92	12,139,125	12,145,375	.42
840,000	Western Union Telegraph Co., 5¼% S.F. Deb., 2/1/87	5,923,550	5,971,400	.21
232,000(b)	26026 Corp., 5½% Leasehold 1st Mtge. S.F., 12/1/74	2,232,000	2,232,000	.08
		$ 202,319,968	$ 202,284,604	6.99%
	ilities			
820,000(b)	American Water Works Co., Inc., 5½% Coll. Tr., 5/1/86	$ 3,820,000	$ 4,001,450	.14%
493,000(b)	California Interstate Telephone Co., 4¼% 1st Mtge., 2/1/79	493,000	463,420	.02
147,000(b)	California Interstate Telephone Co., 4¼% S.F. Deb., 2/1/74	147,000	144,428	.01
000,000(b)	Consolidated Edison Co. of New York, 4.60% 1st & Ref. Mtge., Ser. BB, 10/15/94	25,000,000	24,812,500	.86
500,000(b)	El Paso Natural Gas Co., 5% 1st Mtge., 4/1/84	500,000	500,000	.02
400,000(b)	El Paso Natural Gas Co., 5¼% S.F. Debs., 4/1/84	1,400,000	1,415,750	.05
428,000(b)	El Paso Natural Gas Co., 5⅛% S.F. Debs., 5/1/79	1,428,000	1,451,205	.05
587,000(b)	El Paso Natural Gas Co., 5.50% 1st Mtge. Pipeline, 4/1/80	2,587,000	2,684,013	.09
986,000	Equitable Gas Co., 3⅛% S.F. Deb., 3/1/70	936,700	916,980	.03
967,000(b)	Florida Gas Transmission Co., 5½% 1st Mtge. Pipeline Bonds, 7/1/79	3,967,000	4,026,505	.14
024,000(b)	General Waterworks Corp., 5½% S.F. Deb., 6/1/81	2,024,000	2,046,770	.07
700,000(b)	Greenwich Water System, Inc., 6% Coll. Trust, 11/1/94	2,700,000	2,865,375	.10
000,000	Houston Corp., 5% Sub. Deb., 8/1/68	1,679,839	1,975,000	.07
200,000(b)	Houston Natural Gas Corp., 4.70% S.F. Deb., 2/15/66-8/15/85	24,200,000	24,200,000	.84

SCHEDULE 1

INVESTORS MUTUAL, INC. *(continued)*

Investments in Securities, Continued

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Utilities, continued			
$2,135,320(b)	Jamaica Water Supply Co., 5¼% S.F. Notes, 7/1/82	$ 2,135,320	$ 2,164,681	.09
2,609,000	Michigan Wisconsin Pipeline Co., 5⅜% 1st Mtge. Pipeline 6/1/80	2,663,058	2,739,450	.10
4,499,000	Midwestern Gas Trans. Co., 5⅜% 1st Mtge. Pipeline, 6/1/80	4,510,679	4,543,990	.16
777,000(b)	Northern Natural Gas Co., 1st Mtge. Pipeline Bonds, 4½% Series, 6/1/73	777,000	772,144	.03
7,500,000(b)	Northwest Natural Gas Co., 4⅜% S.F. Deb., 4/1/85	7,500,000	7,500,000	.26
5,000,000(b)	Northwest Natural Gas Co., 5% S.F. Deb., 6/1/82	5,000,000	5,043,750	.17
952,000	Northwest Natural Gas Co., 5⅛% 1st Mtge., 2/1/84	952,000	961,520	.03
10,000,000	Pacific Gas & Electric Co., 4½% 1st & Ref. Mtge., KK, 12/1/96	10,000,000	9,975,000	.34
619,000	Pioneer Natural Gas Co., 5½% S.F. Deb., 3/1/77	620,548	612,810	.02
4,000,000(b)	Portland General Electric Co., 4.70% 1st Mtge., 3/1/95	4,000,000	4,000,000	.14
1,327,000	Quebec Natural Gas Corp., 5¼% Sub. Deb., 4/1/85	967,524	1,134,585	.04
2,000,000(b)	Southeastern Michigan Gas Co., 5% S.F. Deb., 6/1/88	2,000,000	2,000,000	.07
919,000(b)	South Georgia Natural Gas Co., 4¼% 1st Mtge. Pipeline Bonds, 2/1/75	919,000	902,918	.03
5,000,000	Tenneco Corp., 5⅛% Deb., 4/1/90	5,067,000	4,975,000	.17
3,929,000	Tennessee Gas Transmission Co., 4¼% Deb., 9/1/74	4,007,580	3,870,065	.13
5,000,000	Tennessee Gas Transmission Co., 5% S.F. Deb., 4/1/82	5,050,000	4,925,000	.17
6,895,000	Tennessee Gas Transmission Co., 5% Deb., 12/1/84	6,893,375	6,722,625	.23
9,903,000	Tennessee Gas Transmission Co., 5⅛% S.F. Deb., 4/1/84	9,933,699	9,903,746	.34
5,630,000	Tennessee Gas Transmission Co., 5¼% Deb., 9/1/85	5,626,850	5,608,888	.19
2,092,000	Tennessee Gas Transmission Co., 5⅜% 1st Mtge. Pipeline Bonds, 1/1/79	2,096,620	2,112,920	.07
683,000	Texas Eastern Transmission Corp., 4⅜% 1st Mtge. Bonds, 3/1/77	679,903	662,510	.02
5,500,000	Texas Eastern Transmission Corp., 5% Deb., 10/1/83	5,500,000	5,390,000	.19
5,500,000	Texas Eastern Transmission Corp., 5% S.F. Deb., 5/1/84	5,500,625	5,335,000	.18
2,665,000	Texas Eastern Transmission Corp., 5⅛% Deb., 8/1/80	2,665,000	2,691,650	.09
1,670,000	Texas Eastern Transmission Corp., 5⅜% Deb., 8/1/81	1,655,404	1,682,525	.06
2,364,000	Texas Eastern Transmission Corp., 5½% Deb., 12/1/76	2,340,076	2,387,640	.08
1,645,000	Texas Eastern Transmission Corp., 5⅜% 1st Mtge. Pipeline Bonds, 9/1/77	1,727,250	1,669,675	.06
967,000	Texas Eastern Transmission Corp., 6% Deb., 6/1/77	956,995	986,340	.03
5,385,000	Texas Gas Transmission Corp., 4⅞% Deb., 8/1/84	5,385,000	5,358,075	.19
2,439,000	Transcontinental Gas Pipeline Corp., 4¾% 1st Mtge., 1/1/84	2,417,667	2,402,415	.08
4,780,000	Transcontinental Gas Pipeline Corp., 4⅞% 1st Mtge., 11/1/82	4,813,938	4,708,300	.16
3,563,000	Transcontinental Gas Pipeline Corp., 5% Ser., 1st Mtge. Pipeline Bonds, 8/1/79	3,556,794	3,554,093	.12
2,866,000	Transcontinental Gas Pipeline Corp., 5% Deb., 12/1/82	2,830,175	2,844,505	.10
630,000	Transcontinental Gas Pipeline Corp., 6¼% Deb., 5/1/78	626,850	648,900	.02

SCHEDULE 1

STORS MUTUAL, INC.
tments in Securities, Continued

(continued)

DS (Continued)

L	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
..., continued				
00(b)	Trunkline Gas Co., 5¼% 1st Mtge. Pipeline, 11/1/79	$ 1,081,000	$ 1,110,728	.04%
00	Union Electric Co., 3⅜% 1st Mtge., 5/1/71	2,343,750	2,359,375	.08
00(b)	Washington Natural Gas Co., 5½% Ser. 1st Mtge., 4/1/77	1,230,000	1,299,188	.05
00(b)	Washington Natural Gas Co., 5½% 1st Mtge., 10/1/79	1,638,000	1,715,220	.06
00(b)	Washington Natural Gas Co., 5¾% S.F. Deb., 10/1/79	867,331	912,525	.03
00(b)	Washington Water Power Co., 4¼% Deb., 3/1/70-3/1/90	2,000,000	2,000,000	.07
00(b)	Westcoast Transmission Co., Ltd., 5½% Sub. Deb. Series B, 4/1/88	593,187	644,875	.02
00(b)	Wisconsin River Power Co., 2⅜% 1st Mtge., 8/1/77	5,160,066	5,156,100	.18
		$ 207,171,803	$ 207,492,127	7.17%
ds:				
00	Atlantic Coast Line R.R. Co., 4½% Equip. Tr. Series 5, 12/1/65-69	$ 1,126,942	$ 1,117,288	.04%
00	Baltimore & Ohio R.R. Co., 3⅜% 1st Consol. Mtge. A, 8/1/70	937,500	937,500	.03
00	Baltimore & Ohio R.R. Co., 4¼% 1st. Consol. Mtge. C, 10/1/95	1,705,100	1,657,458	.06
731(b)	Bangor & Arrostook Railroad Co., 4.80% Cond. Sales Equip. Oblig., 7/1/66-79	4,426,731	4,426,731	.15
00	Boston and Maine Railroad Co., Equipment Trust Series 1, 4½%, 3/1/66-71	860,354	715,950	.02
00	Boston and Maine Railroad Co., Equipment Trust Series 1, 6%, 3/1/66-71	581,722	502,313	.02
00	Chesapeake & Ohio Ry. Co., 4¼% Equip. Tr., 8/1/66-67	831,714	824,855	.03
584(b)	Chesapeake & Ohio Ry. Co., 4.70% Cond. Sales Equip. Oblig., 1970-79	4,547,584	4,485,055	.16
00	Chicago, Burlington & Quincy R.R. Co., 3⅛% Equip. Tr. No. 2 (1963), 12/1/65-12/1/66	361,175	356,850	.01
00	Chicago, Burlington & Quincy R.R. Co., 4% Equip. Tr. No. 3, 1/15/66-67	525,000	521,063	.02
00	Chicago & Eastern Illinois R.R. Co., 3¼% 1st Mtge. Series B, 5/1/85	905,850	841,500	.03
667(b)	Chicago & Eastern Illinois R.R. Co., 5% Note, 2/28/78	1,841,667	1,841,667	.06
000	Chicago & N.W. Ry. Co., 2nd Equip. Trust of 1958, 5½%, 10/15/67-73	770,000	796,950	.03
000(b)	Chicago & N.W. Ry. Co., 5¼% Equip. Oblig. S.A., 11/1/78	1,440,000	1,440,000	.05
000	Chicago, Rock Island & Pacific R.R. Co., 4¼% Equip. Tr. Ser. Y, 2/1/66-8/1/67	222,443	220,335	.01
000	Chicago, Rock Island & Pacific R.R. Co., 5½% 1st Mtge. Series C, 2/1/83	2,419,894	2,521,496	.08
000	Chicago, Terre Haute & Southeastern Ry. Co., 2¼%-4¼% Income Mtge., 1/1/94	896,908	843,173	.03
000	Chicago, Terre Haute & Southeastern Ry. Co., 2¼%-4¼% 1st & Ref. Mtge., 1/1/94	640,000	549,588	.02
000	Chicago Union Station Co., 3⅛% Sr. Deb. Ser. A, 6/1/66-67	3,976,860	3,940,000	.14

SCHEDULE 1

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
	Railroads, continued			
$ 775,000	Denver & Rio Grande Western R.R. Co., 4½% Income Series A, 1/1/2018	$ 614,672	$ 720,750	.03%
2,990,000(b)	Fruit Growers Express Co., 4.55% Equip. Tr., 3/15/70-74	2,990,000	2,990,000	.10
2,990,000(b)	Fruit Growers Express Co., 4.65% Equip. Tr., 3/15/75-79	2,990,000	2,990,000	.10
439,000	Great Northern Ry. Co., 4% 2nd Equip. Tr., 6/1/66-67	440,594	434,061	.02
2,000,000	Gulf, Mobile & Ohio R.R. Co., 4% Gen. Mtge. Inc. B, 1/1/2044	1,418,924	1,460,000	.05
210,000	Gulf, Mobile & Ohio R.R. Co., 4½% Equip. Tr. Series M, 8/1/67	210,064	208,425	.01
1,300,000	Gulf, Mobile & Ohio R.R. Co., 5% Income Deb. Series A, 12/1/2056	974,062	1,251,875	.04
2,653,933(b)	Louisiana & Arkansas Ry. Co., 4.60% Cert. of Int., 5/1/66-79	2,653,933	2,653,933	.09
359,000	Louisville & Nashville R.R. Co., 3⅛% Equip. Series FF, 6/1/66	360,253	356,756	.01
750,000	Louisville & Nashville R.R. Co., 4⅛% Equip. Tr. Series GG, 10/15/65-67	749,475	746,250	.03
2,235,000	Louisville & Nashville R.R. Co., 4½% Equip. Tr., 1/1/66-70	2,228,952	2,207,063	.07
944,000	Minneapolis, St. Paul & S. Ste. Marie R.R. Co., 4½% 1st Mtge. Series A, Cum. Inc., 1/1/71	872,258	883,820	.03
50,000	Missouri Pacific R.R. Co., 4% Equip. Tr. Ser. S., 11/1/65	50,234	49,875	.01
2,750,000	Missouri Pacific R.R. Co., 4¼% 1st Mtge. Series B, 1/1/90	1,583,532	2,375,313	.07
2,750,000	Missouri Pacific R.R. Co., 4¼% 1st Mtge. Series C, 1/1/2005	1,573,260	2,313,438	.07
800,000	Missouri Pacific R.R. Co., 4¼% Gen. Mtge. Income Series A, 1/1/2020	439,124	613,000	.02
1,073,000	Missouri Pacific R.R. Co., 4¼% Gen. Mtge. Income Series B, 1/1/2030	557,825	784,631	.03
1,090,000	New York, Chicago & St. Louis R.R. Co., 4⅛% Equip. Tr., 10/15/66-67	1,093,423	1,087,275	.04
3,000,000	New York, Chicago & St. Louis R.R. Co., 4½% Income Deb., 12/31/89	3,013,100	2,820,000	.10
120,000	Norfolk & Western Ry. Co., 4% Equip. Tr. Ser. E, 10/1/65	120,505	119,700	.01
258,000	Norfolk & Western Ry. Co., 4% Equip. Tr. Ser. J, 5/1/66-67	259,082	256,065	.01
900,000	Norfolk & Western Ry. Co., 4% Equip. Tr. Ser. K, 7/1/66-67	902,520	892,125	.03
900,000	Norfolk & Western Ry. Co., 4⅛% Equip. Tr. Ser. K, 7/1/66-67	897,907	893,250	.03
2,575,000	Norfolk & Western Ry. Co., 4⅛% Equip. Tr. Ser. L, 11/1/65-69	2,570,350	2,552,469	.09
2,280,000	Northern Pacific Ry. Co., 4⅛% Equip. Tr., 1/9/66-70	2,273,808	2,260,050	.07
8,773,674(b)	Pennsylvania R.R. Co., 4.60% Cond. Sales Equip. Oblig., 1/15/66	8,773,674	8,707,872	.30
2,947,259(b)	Pennsylvania R.R. Co., 4⅛% Cond. Sales Equip. Oblig., 3/1/70-9/1/72	2,947,259	2,910,418	.10

SCHEDULE 1

NVESTORS MUTUAL, INC.
ivestments in Securities, Continued

(continued)

INCIPAL MOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE
ONDS (Continued)				
ailroads, continued				
6,876,936(b)	Pennsylvania R.R. Co., 4¾% Cond. Sales Equip. Oblig., 3/1/73-9/1/79	$ 6,876,936	$ 6,730,801	.23%
9,999,980(b)	Pennsylvania R.R. Co., 4.75% Cond. Sales Equip. Oblig., 1965-1980	19,999,980	19,849,980	.69
1,500,000	Pennsylvania R.R. Co., 5¼% Coll. Tr., 6/1/85	1,507,500	1,563,750	.05
1,710,000	Portland Terminal Co., 6.25% 1st., 2/1/86	1,644,300	1,761,300	.06
4,101,176(b)	Railease, Inc., 4.70% Cert. of Int., 1970-79	4,101,176	4,070,417	.14
348,000	Southern Indiana Ry. Co. 2¾%-4¼% 1st Mtge., 1/1/94	282,384	249,255	.01
190,000	Southern Pacific Co., 4% Equip. Tr. Series 20, 3/1/66	191,239	189,288	.01
1,080,000	Southern Pacific Co., 4% Equip. Tr. Series 21, 5/1/66-67	1,084,790	1,071,900	.04
960,000	Southern Pacific Co., 4¼% Equip. Tr. Series 22, 9/1/66-67	960,725	954,000	.03
2,077,000	Southern Pacific Co., 4% Series 23, 11/1/65-69	2,056,950	2,074,404	.07
1,084,000	Southern Pacific Co., Oregon Lines, 4½% 1st A, 3/1/77	1,080,531	1,073,160	.04
268,000	Southern Railway Co., 4% Equip. Tr. Series ZZ, 2/15/66-67	269,147	266,325	.01
856,000	Southern Railway Co., 4% Equip. Tr. Series AAA, 3/16/66-9/16/67	853,498	849,580	.03
856,000	Southern Railway Co., 4¼% Equip. Tr. Series AAA, 3/16/66-67	861,097	854,930	.03
272,000	Texas & Pacific Ry. Co., 4⅛% Equip. Tr. Series V, 7/1/66-67	272,000	269,960	.01
900,000	Texas & Pacific Ry. Co., 4¼% Equip. Tr. Series W, 1/1/66-70	899,186	889,875	.03
2,736,000(b)	Trailer Train Co., 4½% Cert. of Int., 4/15/66-69	2,736,000	2,722,320	.09
3,141,000(b)	Trailer Train Co., 4.85% Cert. of Int., 4/15/70-79	3,141,000	3,105,664	.11
12,320,000(b)	Trailer Train Co., 4.85% Cert. of Int., 7/15/70-79	12,320,000	12,181,400	.42
6,000,000(b)	Trailer Train Co., 4.85% Cert. of Int., 10/15/65-79	6,000,000	5,940,000	.21
2,000,000(b)	Trailer Train Co., 4.85% Cert. of Int., 12/15/79	2,000,000	1,977,500	.07
1,458,884(b)	U.S. Railway Equipment Co., 6% Secured Notes, 11/1/65-2/1/72	1,458,884	1,504,475	.05
566,848(b)	U.S. Railway Equipment Co., 6¼% Equip. Ser., 11/15/65-5/15/70	566,848	584,562	.02
1,400,000	Wabash R.R. Co., 3½% 1st Mtge., 2/1/71	1,307,124	1,296,750	.05
1,300,000	Wabash R.R. Co., 4¼% Gen. Mtge. Income Series B, 1/1/91	1,082,406	1,170,000	.04
1,557,000	Western Maryland Ry. Co., 5½% Deb., 1/1/82	1,561,954	1,557,000	.05
		$ 147,691,889	$ 148,836,782	5.14%
Other Government and Revenue Bonds				
$14,400,000(b)	City of Montreal, Canada, 5% S.F. Deb., 11/1/2004	$ 14,400,000	$ 14,184,000	.49%
1,922,000	Japan External Loan, 5½% S.F., 5/1/80	1,878,806	1,845,120	.06
5,000,000	Niagara Falls Bridge Commission, 5¾% Bridge Revenue Bonds, 11/1/2000	5,000,000	5,250,000	.18
2,894,000	Nippon Telegraph & Telephone Public Corp., 5¾% Gtd. Dollar Bonds, 7/15/78	2,799,945	2,662,480	.09
		$ 24,078,751	$ 23,941,600	.82%
	Total bonds	$ 785,292,680	$ 787,206,437	27.19%
	Total short-term notes	$ 66,434,630	$ 66,434,630	2.30%
	Total investment in securities	$2,203,994,318	$2,895,090,893	100.00%

SCHEDULE I

INVESTORS MUTUAL, INC.
Investments in Securities, Continued

(continued)

BONDS (Continued)

PRINCIPAL AMOUNT	NAME OF ISSUER AND TITLE OF ISSUE	COST	MARKET VALUE (a)	PERCENTAGE OF TOTAL MARKET VALUE

Notes

(a) Securities listed on national exchanges are valued at closing market quotations at September 30, 1965. Where there were sales on that date, the values are based upon the mean between quoted bid and asked prices. Discount notes are valued at amortized cost. The value of unlisted securities is based upon the mean between bid and asked prices according to the quotations as of that date, except as otherwise indicated in note (b).

(b) At fair value in the opinion of the Directors—not currently quoted.

(c) Presently non-income producing.

(d) The cost of securities for Federal income tax purposes at September 30, 1965 was $2,204,106,825.

(e) Investment in affiliate (as defined in Section 2(a) (3) of the Investment Company Act of 1940 to include companies 5% or more of whose voting securities are held) at September 30, 1965 was:

	COST	MARKET VALUE
130,000 shares common stock of Continental Baking Co.	$6,437,254	$6,[illegible]

APPLICATION

APPLICATION for shares of stock of *Investors* MUTUAL, INC. (Company)

I (we) the undersigned apply to purchase, for the payment tendered herewith, shares of the stock of the above Company, at the public offering price determined in the manner described in the prospectus.

Shares (and fractional shares) acquired by me (us) pursuant to this application and to future payments hereunder, and through reinvested dividends, shall be credited to my (our) account upon the Company books as described below, but no certificate therefor shall be issued unless requested by me (us) or unless Company deems advisable.

Each future payment hereunder shall constitute a separate application. Each application must be expressly accepted or rejected by Company at Minneapolis, Minnesota.

ADDITIONAL PURCHASE PLAN – MAY BE INCREASED AT ANY TIME			PAYMENT TENDERED WITH APPLICATION
I (we) intend, without obligation to do so, to make additional systematic purchases of shares of Company stock in accordance with the Additional Purchase Plan indicated hereon.	AMOUNT $	☐ MONTHLY ☐ QUARTERLY ☐ AS CONVENIENT	$

	FIRST NAME	MIDDLE INITIAL	LAST NAME	AGE	
1 INDIVIDUAL USE LINE (1)					
2 TRUST USE LINES (1) AND (2)	FIRST NAME	MIDDLE INITIAL	LAST NAME	AGE	AS BENEFICIARY UNDER ATTACHED DECLARATION OF TRUST.
	AS TRUSTEE FOR				
3 JOINT TENANCY USE LINES (1) AND (3)	Registration in this form is intended to complete a gift of any contribution by either applicant in excess of his (her) pro rata share of the price and represents agreement that ownership be in such form. FIRST NAME	MIDDLE INITIAL	LAST NAME	AGE	AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON.
	AND				

THIS APPLICATION SIGNED AT	PERMANENT MAILING ADDRESS DESIGNATED BY APPLICANT
CITY STATE	STREET
DATE SIGNED	CITY STATE ZIP CODE
TAXPAYERS IDENTIFICATION NO. (SOCIAL SECURITY NO.)	INDICATE INDIVIDUAL'S SOCIAL SECURITY NUMBER SHOWN: ☐ NAME ON LINE 1 ☐ NAME ON LINE 3 ☐ OTHER (WRITE NAME)

X

(SIGNATURE OF APPLICANT FROM LINE 3) (SIGNATURE OF APPLICANT FROM LINE 1)

(DIVISIONAL SALES OFFICE) (OFFICE NUMBER) (SIGNATURE OF BONDED SALES REPRESENTATIVE OF INVESTORS DIVERSIFIED SERVICES, INC.)

INVESTORS DIVERSIFIED SERVICES, INC. ACTS AS BROKER FOR ISSUER IN THIS TRANSACTION

TO BE COMPLETED BY REPRESENTATIVE OR DIVISIONAL SALES OFFICE

☐ DO NOT ISSUE CERTIFICATE

☐ ISSUE CERTIFICATE - (Certificate will be mailed to applicant unless a letter signed by the applicant is attached specifying another mailing address, such as a bank, etc.)

If this is a joint application, are the tenants husband and wife? ☐ Yes ☐ No (If Yes, show husbands tax identification number only.)

DIVISIONAL SALES MANAGER NUMBER

DISTRICT SALES MANAGER NUMBER

SENIOR SALES REPRESENTATIVE NUMBER

JUNIOR SALES REPRESENTATIVE NUMBER

TO BE COMPLETED IN HOME OFFICE

CERTIFICATE MAILED	NEW	CASH	DATE ACCEPTED AND REINVESTANCE NUMBER
		FUNDS	

FORM NNOR - SERIES AA

CLASS	OCCUPATION CODE		SALE STATE	EMPL – EDIT
	INDUSTRY	OCCUPATION		

COUNTY OF RESIDENCE	SEX	BIRTH DATE					INVEST-O-MATIC CHECK
COUNTY CODE NUMBER	MALE ☐ FEMALE ☐	MONTH	DAY	YEAR	CHECK IF APPLICANT IS A FULL TIME EMPLOYEE OR A REPRESENTATIVE OF IDS FOR 90 DAYS. ☐	IS THIS APPLICATION TO BE CONSIDERED FOR A REDUCED SALES CHARGE? ☐ YES ☐ NO	☐ YES ☐ NO

OCCUPATION
IF HOUSEWIFE DEPENDENT ON HUSBAND SHOW HIS OCCUPATION.

☐ EMPLOYEE
☐ EMPLOYER

TYPE OF BUSINESS OR TRADE

OCCUPATION – DUTIES

LIST OTHER RELATED FUND, IDS, IRA & KEOGH ACCOUNTS INCLUDING OTHER APPLICATIONS IF ANY, SUBMITTED WITH THIS APPLICATION – IF NONE WRITE "NONE"

ACCOUNT NO.	NAME		RELATIONSHIP EXPLAIN IF NOT HUSBAND, WIFE OR MINOR CHILD

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF

Investors MUTUAL, INC., PROSPECTUS AA

X _____

SIGNATURE(S) OF APPLICANT(S)

A CONFIRMATION OF YOUR PURCHASE WILL BE SENT DIRECT TO YOU BY THE HOME OFFICE

NOTE IF AUTHORIZATION BELOW IS NOT SIGNED DIVIDENDS WILL BE PAID IN CASH

AUTHORIZATION TO REINVEST DIVIDENDS

I (we) authorize the Company to pay all cash dividends hereafter owing to me (us) on shares of Company stock acquired hereunder to Investors Diversified Services, Inc. (Investors) which, as my (our) agent, forthwith shall reinvest all such dividends in additional shares of Company stock at their asset value at the close of business on the day each such dividend is reinvested.

This authorization may be terminated at any time by written notice from the Shareholder to Investors at Minneapolis, Minnesota, and such termination shall be effective upon its receipt. Investors may terminate this agency by written notice to the shareholder.

X _____ _____

(SIGNATURE OF APPLICANT FROM LINE 9) (SIGNATURE OF APPLICANT FROM LINE 11)

Growth of Investors Mutual

Fiscal Year Ended	Number of Shareholder Accounts	Number of Shares Outstanding*	Net Assets
Dec. 31, 1940	175	59,768	$ 283,885
Dec. 31, 1941	4,300	947,762	4,055,521
Dec. 31, 1942	13,500	2,894,872	12,576,650
Dec. 31, 1943	18,769	5,068,476	25,825,678
Dec. 31, 1944	27,987	8,014,336	45,915,241
Sept. 30, 1945	34,947	10,655,936	66,964,088
Sept. 30, 1946	45,136	14,004,264	86,708,471
Sept. 30, 1947	55,632	17,778,270	107,068,345
Sept. 30, 1948	65,196	21,315,530	121,188,210
Sept. 30, 1949	76,228	27,038,638	157,042,597
Sept. 30, 1950	92,087	33,780,324	218,586,332
Sept. 30, 1951	113,890	43,387,620	302,597,921
Sept. 30, 1952	145,652	56,644,570	398,529,794
Sept. 30, 1953	173,690	70,145,898	472,360,654
Sept. 30, 1954	196,444	81,347,750	662,055,980
Sept. 30, 1955	220,575	93,278,668	846,644,515
Sept. 30, 1956	249,030	104,715,277	953,717,683
Sept. 30, 1957	269,433	116,589,869	996,963,820
Sept. 30, 1958	280,787	125,301,412	1,217,926,124
Sept. 30, 1959	298,244	138,564,746	1,410,653,011
Sept. 30, 1960	316,856	150,447,890	1,504,792,065
Sept. 30, 1961	327,287	159,255,201	1,843,492,415
Sept. 30, 1962	340,386	172,739,901	1,719,389,253
Sept. 30, 1963	366,916	191,986,718	2,179,693,822
Sept. 30, 1964	398,692	214,534,724	2,620,537,529
Sept. 30, 1965	429,985	239,926,645	2,940,769,421

Since its inception in 1940, Investors Mutual has grown steadily until it is now the world's largest mutual fund. While this growth has been due in major part to the sale of shares resulting from widespread public acceptance of Investors Mutual as an investment medium, it also reflects a long-term increase in the per share asset value of the Company as shown by the table on page 3.

Not only has the number of shareholders increased each year, but also the number of those shareholders who each year add to their investment in the Company, thus demonstrating their especial confidence in and satisfaction with Investors Mutual. In fact, over 73% of the Company's shareholders, holding approximately 72% of the shares outstanding, are now consistently adding to their investment in Investors Mutual, either through the reinvestment of dividends in additional shares (see page 6) or by regular systematic purchases of additional shares (see page 6).

*Adjusted for 2-for-1 stock split on April 26, 1956.

EXECUTIVE OFFICES
Roanoke Building
Minneapolis, Minnesota

INDEPENDENT ACCOUNTANTS
Peat, Marwick, Mitchell & Co.
Minneapolis, Minnesota

CUSTODIAN
Bank of Delaware
Wilmington, Delaware

DISTRIBUTOR AND INVESTMENT MANAGER
Investors Diversified Services, Inc.
Investors Building, Minneapolis, Minnesota

[Exhibit 4 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of Comptroller of the Currency]

STATEMENT OF THE COMPTROLLER OF THE CURRENCY

This Office fully supports and approves of the plans of the First National City Bank of New York to establish a commingled fund for agency accounts. Since April of 1963, when Regulation 9 was revised to open the door to such activities by banks, we have sought to have removed the artificial restraints which have heretofore needlessly kept them from offering these constructive services. It is believed that a significant benefit will be derived for the public and the economy—one which banks have been uniquely qualified to perform since they entered the fiduciary field. As we have pointed out many times previously, the collective investment of agency accounts involves no more than an economic combination of services which have heretofore been performed separately by bank trust departments.

We have been aware from its inception of the intent of First National City Bank to explore the possibility of working out a way of operating a commingled fund which satisfied the staff of the SEC that their laws were being complied with, and which did not involve prohibitive burdens upon the bank. We have approved and encouraged this course of action as we have similarly encouraged other substantial and qualified efforts to provide these services. The proposed arrangement was given the specific approval of this Office early this year, and if it is put into operation, Regulation 9 will be amended to include a general provision authorizing such funds so that specific approval will not be necessary. It is our hope that this development will lead to the resolution of the difficulties which have existed previously and that no obstacles will be raised now or in the

future which would serve unduly to hamper or preclude bank operation of commingled funds for agency accounts.

August 25, 1965

[Exhibit 6 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

FORM N-8B-1

REGISTRATION STATEMENT OF MANAGEMENT INVESTMENT COMPANY

Pursuant to Section 8 of

THE INVESTMENT COMPANY ACT OF 1940

COMMINGLED INVESTMENT ACCOUNT OF FIRST NATIONAL CITY BANK
(Name of Registrant)

399 Park Avenue, New York, New York
(Address of principal executive office)

Item 1. *General Information.*

Registrant is a collective investment fund established in the State of New York by resolution of the Board of Directors of First National City Bank on September 21, 1965 pursuant to applicable regulations of the Comptroller of the Currency.

Item 2. *Development of Business.*

Not applicable.

Item 3. *Subclassification of Registrant.*

(a) Registrant is an open-end investment company.

(b) Registrant proposes to operate as a diversified investment company.

Item 4. *Fundamental Policies of the Registrant.*

Registrant's fundamental policies (including, but not limited to, those with respect to the borrowing of money, the underwriting of securities of other issuers, the concentration of investments in particular industries, the purchase and sale of real estate, the purchase and sale of commodities or commodity contracts, the making of loans to other persons, the type of securities in which it may invest, the percentage of assets which it may invest in the securities of any one issuer, the percentage of voting securities of any one issuer which it may acquire, investment in companies for the purpose of exercising control or management, investment in securities of other investment companies and portfolio turnover) are stated under the headings "Investment Policy" and "Investment Restrictions" in the Preliminary Prospectus comprising part of Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same date as this Registration Statement. A copy of such Prospectus is filed herewith, and all statements of policy appearing under the headings "Investment Policy" and "Investment Restrictions" are hereby incorporated by reference in this Registration Statement and are hereby stated to be fundamental policies of Registrant.

Item 5. *Policies with Respect to Security Investments.*

All of Registrant's policies with respect to security investments are treated as fundamental policies under Item 4 above.

Item 6. *Diversification of Assets.*

Not applicable. Registrant held no securities or any other assets on the date of registration, and its first fiscal year has not ended.

Item 7. *Underwriting Commitments.*

Not applicable. Registrant has made no commitments as underwriter, and it is a fundamental policy of Registrant that its funds will not be used in the underwriting of securities. See Item 4 of this Registration Statement.

Item 8. *Tax Status.*

Registrant has not had, to date, a taxable year. Registrant has obtained a ruling of the Internal Revenue Service that it will be classified as an association taxable as a corporation for Federal income tax purposes and Registrant intends to meet the requirements of subchapter M of chapter 1 of subtitle A of the Internal Revenue Code of 1954 during the current taxable year.

Item 9. *Pending Legal Proceedings.*

None.

Item 10. *Capitalization.**

*As of date of filing–first fiscal year has not ended.

(1)	(2)	(3)	(4)
Title of class	Amount authorized	Amount held by registrant or for its account	Amount outstanding exclusive of amount shown under (3)
Units of participation	Unlimited	None	None

Item 11. *Defaults and Arrears on Senior Securities.*

(a) Not applicable.

(b) Not applicable.

Item 12. *Condensed Financial Information.*

(a) Not applicable. Registrant has no assets now and has had no assets, income or operating expenses during the last ten years.

(b) Not applicable. Registrant has no senior securities outstanding now and has had no senior securities outstanding during the last ten years.

Item 13. *Persons in Control Relationship with Registrant.*

Registrant does not control any company. Registrant has no units of participation presently outstanding, and at the date of the filing of this Registration Statement, might be deemed to be controlled by its organizer and proposed investment adviser, First National City Bank, New York, New York, a national banking association, and under common control with the following other companies (exclusive of inactive companies, nominee companies and companies for the ownership or operation of real estate) which are presumed to be directly or indirectly controlled by First National City Bank within the meaning of the Investment Company Act of 1940:

Name of Company	State of Incorporation or Sovereign Power under the Laws of which Organized	Percentage of Voting Power Owned by First National City Bank	Percentage of Voting Power Owned by a directly or indirectly owned subsidiary of First National City Bank
First National City Overseas Investment Corporation	United States - Edge Act Corporation	100%	
First Consolidated Leasing Company	Republic of South Africa		35%
Currie Leasing Corporation Ltd.	Republic of South Africa		50%
International Banking Corporation	Connecticut	100%	
The Bank of Monrovia	Liberia		100%
The First National City Bank of New York (South Africa) Ltd.	Republic of South Africa		100%*
First National City Trust Company (Bahamas) Ltd.	Bahamas		100%*
The Mercantile Bank of Canada	Canada		100%*
International Trust Company	Quebec		100%*
H.C. Andreae & Company Limited	Canada		100%*
Andreae Equity Investment Fund Limited	Canada		20%**
New York London Trustee Co. Limited	England		75%***
Banque Internationale pour L'Afrique Occidentale	France		40%
Banco de Honduras S.A.	Honduras		51%
FNCB Services Corporation	New York	100%	
Carte Blanche Corporation	Delaware		100%

* Exclusive of directors' or shareholders' qualifying shares.

** International Trust Company has an option to acquire an additional 30% of the voting securities of Andreae Equity Investment Fund Limited.

*** The remaining 25% of the voting securities of New York London Trustee Co. Limited are owned by Hill, Samuel & Co. Limited, an English Company in which International Banking Corporation owns approximately a 10% interest.

As soon as units of participation are outstanding, First National City Bank will, pursuant to the provisions of the Investment Company Act of 1940, be presumed not to control Registrant, although such presumption may be rebutted. First National City Bank may be deemed to control Registrant for the purposes of the provisions of the Securities Act of 1933 relating to the liability of controlling persons notwithstanding any presumption to the contrary under the provisions of the Investment Company Act of 1940. Reference is made to the statements under the headings "Purpose", "Supervision and Management", "Investment Policy", "Units of Participation", "Admission to the Commingled Account", "Termination of Participations", "Management Services", "Members of the Committee", "Meetings of Participants", "Election of Members of the Committee", "Termination of the Commingled Account", and "Status of the Commingled Account" and to the form of Authorization for Commingling of Agency Accounts in the Preliminary Prospectus comprising part of Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same date as this Registration Statement, for a statement of the material facts pertinent to the possible existence of control of Registrant by First National City Bank. A copy of such Prospectus is filed herewith, and all statements under the headings referred to above and all terms of the Authorization for Commingling of Agency Accounts which are pertinent to the possible existence of control are hereby incorporated by reference in this Registration Statement.

Item 14. *Persons Owning Equity Securities of Registrant.*

None (as of date of filing).

Item 15. *Number of Holders of Equity Securities.*

None (as of date of filing).

Item 16. *Directors and Executive Officers.*

All of the following persons are members of the Committee for Registrant. Registrant has no executive officers.

Name and Address	Principal Occupations During Past Five Years
Robert L. Hoguet, Jr.* 399 Park Avenue New York, New York	Executive Vice President, First National City Bank, Trust and Investment Division**
Conrad F. Ahrens 399 Park Avenue New York, New York	Vice President, First National City Bank, Trust and Investment Division, Investment Research Department**
John D. Lockton 570 Lexington Avenue New York, New York	Treasurer, General Electric Company; Chairman, Trustees of the General Electric Pension Trust and other General Electric trusts; Trustee, Elfund Trusts
Paul Saurel 60 Wall Street New York, New York	Partner, Messrs. Morris & McVeigh, Attorneys
Hulbert W. Tripp 399 Park Avenue New York, New York	Senior Vice President, First National City Bank, Trust and Investment Division (since January 1965); Chairman, Investments Committee, University of Rochester (since January 1965); prior to January 1965, Financial Vice President, University of Rochester

*Chairman of the Committee.

**Messrs. Hoguet and Ahrens have been associated with First National City Bank in responsible positions for more than the past five years, although not at all times in the positions shown.

Item 17. *Members of Advisory Board of Registrant.*

Not applicable.

Item 18. *Remuneration of Directors, Officers and Members of Advisory Board.*

(a) Members of the Committee for Registrant who are affiliated with First National City Bank receive no remuneration from Registrant. The Committee determines the remuneration paid to the members of the Committee who are not affiliated with First National City Bank, and Registrant is reimbursed by First National City Bank. There are at present and are expected to be during Registrant's first fiscal year two such members. Although no remuneration has been paid to such members as of the date of filing, it is expected that such members will in the aggregate receive fees of $5,000 during Registrant's first fiscal year ending August 31, 1966, and fees of $10,000 for the succeeding full fiscal year.

(b) Not applicable. Registrant has no plan for the payment of pension or retirement benefits.

Item 19. *Indemnification of Directors and Officers.*

There are no contracts, arrangements or statutes under which any member of the Committee for Registrant is insured or indemnified by Registrant against any liability which any such member may incur in his capacity as such.

Article NINTH of the Articles of Association of First National City Bank, Registrant's proposed investment adviser, provides that any person, his heirs, executors or administrators, may be indemnified or reimbursed by First National City Bank for reasonable expenses actually incurred in connection with any action,

suit or proceeding, civil or criminal, to which he or they shall be made a party by reason of his being or having been a director, officer or employee of First National City Bank or of any firm, corporation or organization which he served in any such capacity at the request of First National City Bank.

It is specifically provided, however, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit or proceeding as to which he shall finally be adjudged to have been guilty of or liable for negligence or wilful misconduct in the performance of his duties to First National City Bank. It is further provided that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit or proceeding which has been made the subject of a compromise settlement except with the approval of a court of competent jurisdiction, or the holders of record of a majority of the outstanding shares of First National City Bank, or the Board of Directors of said Bank, acting by vote of directors not parties to the same or substantially the same action, suit or proceeding, constituting a majority of the whole number of the directors.

Article NINTH of the Articles of Association of First National City Bank states that the right of indemnification or reimbursement provided therein shall not be exclusive of other rights to which such person, his heirs, executors or administrators, may be entitled as a matter of law.

To the extent that indemnification by First National City Bank for liability arising under the Securities Act of 1933 or the Investment

Company Act of 1940 is permitted to members of the Committee for Registrant pursuant to the foregoing or otherwise (including, without limitation, pursuant to any applicable statute or rule of law of the State of New York), Registrant is advised that the Securities and Exchange Commission is of the opinion that such indemnification is against public policy, as expressed in the Securities Act of 1933 and in the Investment Company Act of 1940, and therefore is unenforceable. In the event that a claim for such indemnification (except to the extent that such claim seeks reimbursement by First National City Bank of expenses paid or incurred in connection with the successful defense of any action, suit or proceeding) arises and the Securities and Exchange Commission is still of the same opinion, First National City Bank, in the absence of precedent deemed controlling by First National City Bank, will submit to a court of appropriate jurisdiction the question whether indemnification by First National City Bank is against public policy as expressed in the Securities Act of 1933 and in the Investment Company Act of 1940 and therefore unenforceable, and will be governed by final adjudication of such issue.

Item 20. *Employees of Registrant.*

Not applicable. Registrant has no employees as of the date of filing and does not intend to have any employees, and there is no company, with relation to Registrant, of the character specified in Section 2(a)(19)(iii) of the Act.

Item 21. *Custodians of Portfolio Securities.*

(a) The custodian of Registrant's portfolio securities will be First National City Bank, 399 Park Avenue, New York, New York.

(b) The arrangements under which such securities will be held are set forth in the Management Agreement, which will be executed in substantially the form attached as Exhibit D to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same date as this Registration Statement, and incorporated by reference as Exhibit 5 to this Registration Statement. The following statements relating to certain provisions of the Agreement are merely brief summaries thereof. Reference is hereby made to Exhibit 5 hereto for a full and complete statement of all the provisions thereof, to which all the following statements are subject, and such statements are qualified in their entirety by such reference. Whenever particular provisions of the Agreement are hereinafter referred to, the statements preceding such reference are qualified in their entirety thereby.

Under the Agreement, First National City Bank will at all times have custody of Registrant's assets. (Paragraph 3) Except in specified instances, securities sold for Registrant will be delivered only against payment. (Paragraph 4) First National City Bank will act as paying or disbursing agent for all funds distributed to participants. (Paragraph 6)

For all of its services under the Agreement, including its investment management and custodian services, First National City Bank will receive as of the last day of each fiscal quarter a fee of 1/8 of 1% of the average of the values of Registrant's net assets taken on each valuation date during such quarter. (Paragraph 10)

The Agreement will remain in force for a maximum of two years from its date of execu-

tion and will continue from year to year thereafter, but only so long as such continuance is approved at least annually either by the Committee for Registrant (including approval by a majority of the members of the Committee who are not affiliated with First National City Bank) or by the vote of participants having a majority of Registrant's units of participation. The Agreement will be terminable on 60 days' written notice by the Committee for Registrant, by the vote of participants having a majority of Registrant's units of participation or by First National City Bank, and will terminate automatically in the event of its assignment by First National City Bank or if it shall not be approved by the vote of participants having a majority of Registrant's units of participation at the first meeting of participants. (Paragraph 12)

Item 22. *Investment Advisers.*

(a) First National City Bank, 399 Park Avenue, New York, New York, will be the investment adviser of Registrant.

(b) The following members of the Committee for Registrant (whose addresses are all 399 Park Avenue, New York, New York) are also affiliated with the proposed investment adviser of Registrant by virtue of their being officers of First National City Bank: Robert L. Hoguet, Jr., Hulbert W. Tripp and Conrad F. Ahrens.

If Registrant is controlled by its proposed investment adviser, First National City Bank, the subsidiaries of First National City Bank listed in Item 13 of this Registration Statement would also be affiliated persons of Registrant by reason of common control by First National City Bank.

(c) First National City Bank will be the investment adviser of Registrant pursuant to the Management Agreement referred to in paragraph (b) of Item 21 of this Registration Statement. The following statements relating to certain provisions of the Agreement are merely brief summaries thereof. Reference is hereby made to Exhibit 5 hereto for a full and complete statement of all of the provisions thereof, to which all the following statements are subject, and such statements are qualified in their entirety by such reference. Whenever particular provisions of the Agreement are hereinafter referred to, the statements preceding such reference are qualified in their entirety thereby.

Under the Agreement, First National City Bank will maintain a continuous investment program for Registrant, not inconsistent with Registrant's stated investment policy. First National City Bank will determine what securities are to be purchased or sold for Registrant and will execute transactions for Registrant accordingly. First National City Bank will determine what portion, if any, of Registrant's assets should be held uninvested and what portion, if any, should be invested in Government obligations. (Paragraph 1)

First National City Bank will reimburse Registrant for any compensation paid by Registrant to any member of the Committee for Registrant who is not affiliated with First National City Bank and will furnish administrative and clerical services, office space and facilities required for the operation of Registrant. First National City Bank will also pay all costs and expenses arising in connection with Regis-

trant's organization, including its initial registration and qualification under the Federal securities laws and under other applicable regulatory requirements, but the cost of maintaining such registration and qualification (other than the cost of printing, publication and distribution of current reports to Participants, which will be paid by First National City Bank) will be an expense of Registrant. The Agreement specifies certain other costs, including the cost of independent professional services (other than in connection with Registrant's organization) and the cost of preparation and distribution of notices to participants and proxy statements, which will be expenses of Registrant. (Paragraph 2)

The provisions of the Agreement respecting the remuneration of First National City Bank for its services (including its services as custodian) under the Agreement and the provisions of the Agreement respecting its duration and termination are described in the third and fourth subparagraphs, respectively, of paragraph (b) of Item 21 of this Registration Statement and reference is hereby made to such subparagraphs for a brief summary of such provisions.

Item 23. *Business and Other Connections of Investment Advisers and Their Managements.*

First National City Bank, proposed investment adviser of Registrant, is a national banking association which has been granted the right to exercise fiduciary powers. As such, it performs a wide variety of the functions of a commercial bank and trust company.

The business and other connections of a substantial nature of each director and senior

officer of First National City Bank having such connections are listed below:*

Directors and senior officers of First National City Bank, proposed investment adviser to Registrant, having other connections	Nature and principal business of other company with which connected	Nature of connection with other company
DIRECTORS		
William M. Batten	J.C. Penney Company, Inc. (operates retail stores)	Chairman and Director
	American Telephone and Telegraph Company	Director
John E. Bierwirth	Deering Milliken Inc. (manufactures textiles)	Director
	Discount Corporation (discount trade bankers)	Director
	Dominick Fund, Inc. (closed-end investment company)	Director
	Hugoton Production Company (produces natural gas)	Director
	Mercantile Stores, Inc. (operates retail stores)	Director
	National Distillers and Chemical Corporation and subsidiaries (produces whiskies and chemicals)	Chairman of the Board and Director
	A-B Chemical Corporation (manufactures polyethylene)	Director and President
	National Helium Corporation (manufactures helium)	Director
	National Petro-Chemical Corporation (manufactures plastics)	Director and President

*Nineteen other senior officers of First National City Bank do not have outside business or other connections of a substantial nature. The term "senior officer" includes each officer with the title of senior vice president or higher.

	Reactive Metals Inc. (produces titanium and zirconium)	Director
	Owens-Corning Fiberglas Corporation (manufactures fibrous glass products)	Director
	Panhandle Eastern Pipe Line Company and subsidiary companies (public utility pipelines)	Director
	Textron, Inc. (diversified manufacturer)	Director
Charles M. Brinckerhoff	A. C. F. Industries (diversified manufacturer)	Director
	The Anaconda Company and subsidiaries (mines, smelts and fabricates non-ferrous metals)	Chairman of the Board and Director
	First Bank Stock Corporation (bank holding company)	Director
C. Sterling Bunnell, Chairman Credit Policy Committee	BASF Colors and Chemicals, Inc. and affiliate (manufactures dyes and chemicals)	Director
	Hi-Alloys Inc. (manufactures tool steels)	Director
	Inspiration Consolidated Copper Co. (produces electrolytic copper)	Director
	Munich Management Corp. (U.S. branch of Munich Reinsurance Co.)	Director
	Siemens Overseas Investments Ltd. (investment holding company)	Director
Percy Chubb, 2nd	Chubb and Son Inc. and affiliates (insurance brokers and underwriters)	Chairman and Director
	New Jersey Bell Telephone Company	Director

R. Gwin Follis	Standard Oil Company of California and subsidiaries	Chairman of the Board and Director
	American Gilsonite Company (mines gilsonite)	Deputy Chairman of the Board and Director
	Crocker-Citizens National Bank of San Francisco	Director
J. Peter Grace	Atlantic Mutual Insurance Co. and subsidiary companies	Trustee
	Brazilian Traction, Light & Power Company, Ltd. (public utility)	Director
	Magnavox Company (manufactures electronic equipment)	Director
	Deering Milliken, Inc. (manufactures textiles)	Director
	Emigrant Industrial Savings Bank	Trustee
	W. R. Grace & Co. and subsidiaries (manufactures chemicals and operates steamship line)	President and Director
	Ingersoll-Rand Company (manufactures machinery)	Director
	Kennecott Copper Corporation and subsidiaries (produces copper products)	Director
	Marine Midland Corporation (bank holding company)	Director
	Miller Brewing Company (brews malt beverages)	Director
	Northern Insurance Company of New York and subsidiaries	Director

	Stone & Webster, Incorporated (engineering and security underwriting)	Director
Joseph A. Grazier	American Radiator & Standard Sanitary Corporation (manufactures heating and plumbing equipment)	Chairman of the Board, President and Director
	Bristol-Myers Company (manufactures drugs and toilet articles)	Director
	Johns-Manville Corporation (manufactures insulating materials)	Director
	The National Cash Register Co.	Director
Michael L. Haider	Standard Oil Co. (New Jersey)	Chairman of the Board, Chief Executive Officer and Director
H. Mansfield Horner	Hartford National Bank & Trust Co.	Director
	Southern New England Telephone Co.	Director
	The Travelers Insurance Company	Director
	United Aircraft Corporation and subsidiary (manufactures aircraft and engines)	Chairman and Director
Amory Houghton	Corning Glass Works	Honorary Chairman of the Board and Director
	Pittsburgh-Corning Corp. (manufactures cellular glass products)	Director
	Dow-Corning Corp. (manufactures silicones)	Director
	Metropolitan Life Insurance Company	Director
	Lincoln Rochester Trust Company	Member Advisory Board

George P. Jenkins	Metropolitan Life Insurance Company	Chairman of Finance Committee and Director
	East River Savings Bank	Director
	American Broadcasting Companies, Inc. (television and radio networks and movie theatre chain)	Director
	St. Regis Paper Company (lumber and paper products)	Director
John R. Kimberly	Kimberly-Clark Corporation (manufactures cellulose papers)	President and Director
	Wisconsin Telephone Company	Director
	First National Bank, Neenah, Wis.	Director
	Corning Glass Works	Director
	Northwestern Mutual Life Insurance Co.	Trustee
Roger Milliken	Deering Milliken, Inc. and subsidiaries (manufactures textiles)	President
	W. R. Grace & Co. and subsidiaries (manufactures chemicals and operates steamship line)	Director
	Mercantile Stores Company, Inc. (operates retail stores)	Director
	Westinghouse Electric Corp.	Director
George S. Moore President	Borg Warner Corporation (manufactures auto parts and household appliances)	Director
	Federal Insurance Company	Director
	Mercantile Stores Company, Inc. (operates retail stores)	Director

	Sanborn Hnos (operates retail stores)	Alternate Director
	Union Pacific Railroad Company and subsidiaries	Director
	United Aircraft Corporation (manufactures aircraft and engines)	Director
	United States Steel Corporation	Director
	Vigilant Insurance Company	Director
Charles G. Mortimer	General Foods Corporation and subsidiaries (produces food products)	Director and Chairman of Executive Committee
	Federal Street Fund (tax-free exchange investment company)	Director
	Ford Motor Company	Director
	Socony Mobil Oil Company, Inc.	Director
	Bell & Howell Company (manufactures photographic equipment)	Director
	Meredith Publishing Company (publisher and operator of television and radio stations	Director and Chairman of Executive Committee
Robert S. Oelman	Koppers Company, Inc. (produces crude oil products)	Director
	The National Cash Register Company	Chairman and Director
	The Ohio Bell Telephone Company	Director
	The Procter & Gamble Co. (produces soaps and foodstuffs)	Director
	The Winters National Bank & Trust Company	Director

Charles C. Parlin	Shearman & Sterling (attorneys)	Member
	Celanese Corporation of America (manufactures synthetic fibers)	Director
	Compania Ontario, S.A. (import-export banking)	Director
	Guerlain, Inc. (imports perfumes)	Director
	Potash Import & Chemical Corporation (importing and trading)	Director
	Schlumberger Limited (holds oil wells and electronic equipment companies)	Director
	United States & Foreign Securities Corporation (closed-end investment company)	President and Director
Richard S. Perkins Chairman of the Executive Committee	Allied Chemical Corporation (produces chemicals and alkalies)	Director and Member of Executive Committee
	Consolidated Edison Co. of N.Y. (public utility)	Trustee and Member of Finance Committee
	Hill, Samuel & Co. Limited (English merchant banking firm)	Director
	New York Life Insurance Company	Director and Member of Finance Committee
	Royal-Globe Insurance Companies	Member of Investment Committee
	International Telephone & Telegraph Corporation	Director and Member of Executive Committee

	Phelps Dodge Corporation (produces copper)	Director
	Southern Pacific Company (holds railway system)	Director
Clifton W. Phalen	New York Telephone Company	Chairman, Director and Member of Executive Committee
	Federal Insurance Company and subsidiary	Director
	Kennecott Copper Corporation and subsidiary (produces copper)	Director and Member of Executive Committee
James S. Rockefeller Chairman	Cranston Print Works Company (finishers of cotton goods)	Director
	The National Cash Register Company	Director
	Pan American World Airways, Inc.	Director
	The Anaconda Company (mines, smelts and fabricates non-ferrous metals)	Director
	Kimberly-Clark Corporation (manufactures cellulose papers)	Director
	Northern Pacific Railway Company	Director
Charles H. Sommer	Monsanto Company and affiliates (produces chemicals and oils)	President, Chairman of Executive Committee and Director
	Trans World Airlines, Inc. (operates airway system)	Director
	Liberty Mutual Insurance Company and subsidiary	Director

	St. Louis Union Trust Company	Director
William C. Stolk	American Can Company and subsidiaries (manufactures containers)	Director
	Johns-Manville Corp. (manufactures insulating materials)	Director
Leo D. Welch	Communications Satellite Corporation	Director
	Electric Bond & Share Company (engineering and chemical producer)	Director
Joseph C. Wilson	Xerox Corporation (manufactures office copying equipment)	President and Director
	The Rank Organization Limited (English film producer)	Director
	Rank Xerox Limited (English manufacturer of office copying equipment)	Director
	Fuji-Xerox Corporation Limited (Japanese manufacturer of office copying equipment)	Director
	Massachusetts Mutual Life Insurance Company	Director
	Lincoln-Rochester Trust Company	Director
	McCurdy & Company (department store)	Director
	Rochester Gas and Electric Corp. (public utility)	Director
	Small Business Investment Company of New York, Inc.	Director
	Rochester Savings Bank	Trustee

SENIOR OFFICERS

(Messrs. Rockefeller, Moore, Perkins and Bunnell included above as Directors)

J. Howard Laeri Vice Chairman	Great Northern Railway Company	Director
	St. Regis Paper Company (manufactures lumber and paper products)	Director
	Sinclair Oil Corporation	Director
Robert L. Hoguet, Jr. Executive Vice President	Andreae Equity Investment Fund Ltd. (Canadian investment company)	Director
	Phoenix Assurance Co.	Director
Edward L. Palmer Executive Vice President	Potlatch Forests, Inc. (produces lumber and derivatives)	Director
	Jamaica Water Supply Co.	Director
William I. Spencer Executive Vice President	Electrochemical Processes, Inc. (process licensor)	Director
	The Prudential Insurance Company of Great Britain	Director
Thomas R. Wilcox Executive Vice President	The Boeing Company (manufactures airplanes)	Director
	Colgate-Palmolive Company (manufactures soaps, cosmetics)	Director
	Mutual Life Insurance Company of New York	Trustee
	National Distillers and Chemicals Corporation (produces whiskies and chemicals)	Director
Walter B. Wriston Executive Vice President	General Mills, Inc. (produces flour and related food products)	Member of Finance Committee and Director
	General Electric Company	Director and Member of Finance Committee

	J.C. Penney Co. (operates retail stores)	Director
G. A. Costanzo Senior Vice President	Owens-Illinois Corp. (manufactures glass products)	Director
E. Newton Cutler, Jr. Senior Vice President	American Radiator & Standard Sanitary Corp. (manufactures heating and plumbing equipment)	Director
	Trust Company of Morris County	Director
	Consumers Power Company (public utility)	Director
John Exter Senior Vice President	African-South African Investment Co., Limited (mines gold and diamonds)	Director
Stephen C. Eyre Senior Vice President	Bayer Foreign Investments Limited (produces chemicals and fertilizers)	Director
John F. Fitzgerald Senior Vice President	Arwood Corporation (manufactures cast metal products)	Director
	Keweenaw Land Association, Ltd. and subsidiaries (holds real estate)	Manager
	J. R. Wood & Sons, Inc. (manufactures diamond rings)	Director
Henry M. Hubshman, Jr. Senior Vice President	Canteen Corporation (operates automatic vending machines)	Director
	Transcaribbean Airways, Inc. and subsidiaries (operates transportation systems)	Director
P. Henry Mueller Senior Vice President	Wyomissing Corporation (manufactures textiles and paper products)	Director
Eben W. Pyne Senior Vice President	Long Island Lighting Company (public utility)	Director

	W. R. Grace & Co. (manufactures chemicals and operates steamship line)	Director
	Phoenix Assurance Company of N.Y.	Director
	The United States Life Insurance Company in the City of New York	Director
	City Investing Company (holds real estate)	Director
	The Long Island Railroad Company	Director
Hulbert W. Tripp Senior Vice President	Xerox Corporation (manufactures office copying equipment)	Director
	Ritter Pfaulder Corp. (manufactures corrosion resistant equipment)	Director
	Rochester Gas & Electric Corp. (public utility)	Director
	University of Rochester	Chairman of Investment Committee

Item 24. *Personnel of Investment Advisers.*

The number of officers (other than senior officers) and other personnel of First National City Bank, Registrant's proposed investment adviser, assigned to the Bank's Investment Advisory, Investment Research and Economics Departments (which Departments will be most directly concerned with the management of Registrant's portfolio), are, as of April 15, 1966, as follows:

Class of Personnel	Number of Full-Time Employees	Number of Part-Time Employees
Account supervisors, counsellors and executives	28	None
Economists, statisticians and research personnel	68	None
All other personnel	60	None

In addition, officers and employees of First National City Bank assigned to other departments will render supporting services to Registrant pursuant to the Management Agreement referred to in paragraph (b) of Item 21 of this Registration Statement.

Item 25. *Remuneration of Certain Affiliated Persons.*

Not applicable. Registrant has not as of the date of filing paid any remuneration to any person.

Item 26. *Capital Stock.*

None. See answer to Item 28 of this Registration Statement.

Item 27. *Long-Term Debt.*

None.

Item 28. Other Securities.

Interests in Registrant are represented by units of participation of equal value. All of the units of participation have equal rights to participate in distributions of net investment income and capital gains and to participate in Registrant's assets on liquidation. Fractions of units, carried out to three decimal places, are used. Each participant is entitled to such number of votes for the election of members of the Committee for Registrant and on all other matters voted on as is equal to the number of units of participation (including fractions of units) held by such participant. There are no pre-emptive rights, conversion rights or sinking fund provisions, and units of participation are not liable to further calls or to assessment by Registrant.

The provisions governing the redemption of units of participation are contained in full under the headings "Determination of Net Asset Value" and "Termination of Participations" in the Preliminary Prospectus comprising part of Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same date as this Registration Statement. A copy of such Prospectus is filed herewith, and all statements with respect to termination of units of participation and the determination of net asset value of units of participation appearing under such headings are hereby incorporated by reference in this Registration Statement. Units of participation may be transferred only to persons who have validly appointed First National City Bank as managing agent (see the forms of Authorization for Commingling of Agency Accounts incorporated by reference as Exhibits 3(a) and 3(b) to this

Registration Statement) and, in the case of transfers of less than all of the units owned by a participant, only if after the transfer the transferor and the transferee will each own units having an aggregate net asset value of not less than $10,000.

Item 29. *General Information as to Distribution of Securities.*

(a) Registrant is not currently offering its units of participation. Registrant expects to raise its minimum capital of $100,000 through an initial private offering of units of participation at $10 per unit to a small group of persons intending to acquire such units for investment.

(b) It is expected that initially Registrant's units of participation will be lawfully offered by Registrant through the offices of First National City Bank in New York.

Item 30. *Pricing of Securities for Sale, Redemption or Repurchase.*

(a) The method to be followed by Registrant in determining the price at which units of participation will be offered to the public and redeemed is described under the headings "Determination of Net Asset Value", "Admission to the Commingled Account" and "Termination of Participations" in the Preliminary Prospectus comprising part of Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same date as this Registration Statement. A copy of such Prospectus is filed herewith and all statements appearing under such headings are hereby incorporated by reference in this Registration Statement.

The method of calculation of the net asset value per unit of participation is illustrated by the following hypothetical price make-up sheet:

HYPOTHETICAL PRICE MAKE-UP SHEET

Investment at market		$3,000,000.00
Cash and accounts receivable		2,000.00
Income receivable		300.00
	Total	$3,002,300.00
Accounts payable	$ 100.00	
Accrued taxes and expenses	1,100.00	1,200.00
Value of net assets		$3,001,100.00
Number of units of participation outstanding		300,000
Net asset value per unit		$10.00366
Net asset value per unit adjusted for fractions		$10.00

(b) There will be no sales load.

(c) As stated under the heading "Distributions and Federal Tax Status" in Registrant's Preliminary Prospectus, distributions of net long-term capital gains realized from the sale of Registrant's securities will be paid in units of participation taken at their net asset value unless the participant elects to receive payment entirely in cash.

Item 31. *Principal Underwriters.*

(a) The Securities and Exchange Commission regards First National City Bank, 399 Park Avenue, New York, New York, as Registrant's statutory principal underwriter. See Items 1, 13, 16, 19, 21 and 22 of this Registration Statement as to the nature of any material relationship of First National City Bank with Registrant (other than that of principal underwriter).

(b) First National City Bank acts as investment adviser to National Variable Annuity Company of Florida relative to the assets of the National Variable Annuity Company of Florida Special Account, which is registered as an investment company under the Investment Company Act of 1940.

First National City Bank also acts as investment adviser to the Equity Annuity Life Insurance Company, which is registered as an investment company under the Investment Company Act of 1940.

First National City Bank also acts as investment adviser to the Netherlands Antilles Mutual Fund, N.V., an investment company organized under the laws of the Netherlands Antilles, the shares of which are available only to persons who are neither residents of nor citizens of the United States.

International Trust Company, a wholly-owned Canadian subsidiary of International Banking Corporation, which is in turn wholly owned by First National City Bank, furnishes investment advice with respect to American securities to International Fund Distributors Limited in its capacity as investment adviser to Andreae Equity Investment Fund Limited, a Canadian investment company.

Item 32. *Management of Principal Underwriters.*

Information with respect to each director and senior officer (i.e., each officer with the title of senior vice president or higher) of First National City Bank is furnished in the following table:

Name and principal business address	Positions and offices with underwriter	Positions and offices with Registrant
DIRECTORS		
William M. Batten 1301 Avenue of the Americas New York, New York 10019	Director	None
John E. Bierwirth 99 Park Avenue New York, New York 10016	Director	None
Charles M. Brinckerhoff 25 Broadway New York, New York 10004	Director	None
C. Sterling Bunnell 399 Park Avenue New York, New York 10022	Chairman Credit Policy Committee and Director	None
Percy Chubb, 2nd 90 John Street New York, New York 10038	Director	None
R. Gwin Follis 225 Bush Street San Francisco, California 94120	Director	None
J. Peter Grace 7 Hanover Square New York, New York 10005	Director	None
Joseph A. Grazier 40 West 40th Street New York, New York 10018	Director	None
Michael L. Haider 30 Rockefeller Plaza New York, New York 10020	Director	None
H. Mansfield Horner 400 Main Street East Hartford, Connecticut 06108	Director	None
Amory Houghton 717 Fifth Avenue New York, New York 10022	Director	None

George P. Jenkins One Madison Avenue New York, New York 10010	Director	None
John R. Kimberly North Lake Street Neenah, Wisconsin 54957	Director	None
Roger Milliken 234 South Fairview Avenue Spartanburg, South Carolina 29302	Director	None
George S. Moore 399 Park Avenue New York, New York 10022	President and Director	None
Charles G. Mortimer 250 North Street White Plains, New York 10602	Director	None
Robert S. Oelman South Main and K Streets Dayton, Ohio 45409	Director	None
Charles C. Parlin 20 Exchange Place New York, New York 10005	Director	None
Richard S. Perkins 399 Park Avenue New York, New York 10022	Chairman of the Executive Committee and Director	None
Clifton W. Phalen 140 West Street New York, New York 10007	Director	None
James S. Rockefeller 399 Park Avenue New York, New York 10022	Chairman and Director	None
Charles H. Sommer 800 N. Lindbergh Boulevard St. Louis, Missouri 63166	Director	None
William C. Stolk 14 Sutton Place South New York, New York 10022	Director	None

Leo D. Welch Room 1250 One Rockefeller Plaza New York, New York 10020	Director	None
Joseph C. Wilson 1250 Midtown Tower Rochester, New York 14604	Director	None

SENIOR OFFICERS

(Messrs. Rockefeller, Moore, Perkins and Bunnell included above as Directors)

J. Howard Laeri 399 Park Avenue New York, New York 10022	Vice Chairman	None
A. Halsey Cook 399 Park Avenue New York, New York 10022	Executive Vice President	None
Robert L. Hoguet, Jr. 399 Park Avenue New York, New York 10022	Executive Vice President	Chairman, Committee for Registrant
Edward L. Palmer 399 Park Avenue New York, New York 10022	Executive Vice President	None
William I. Spencer 55 Wall Street New York, New York 10015	Executive Vice President	None
Thomas R. Wilcox 399 Park Avenue New York, New York 10022	Executive Vice President	None
Walter B. Wriston 399 Park Avenue New York, New York 10022	Executive Vice President	None
Bernard T. Stott 399 Park Avenue New York, New York 10022	Comptroller	None
Delmont K. Pfeffer 55 Wall Street New York, New York 10015	Senior Vice President	None

Carl W. Desch 399 Park Avenue New York, New York 10022	Senior Vice President and Cashier	None
Leif H. Olsen 399 Park Avenue New York, New York 10022	Senior Vice President and Economist	None
E. Sherman Adams 399 Park Avenue New York, New York 10022	Senior Vice President	None
John B. Arnold 399 Park Avenue New York, New York 10022	Senior Vice President	None
H. Lansing Clute 399 Park Avenue New York, New York 10022	Senior Vice President	None
G. A. Costanzo 399 Park Avenue New York, New York 10022	Senior Vice President	None
E. Newton Cutler, Jr. 399 Park Avenue New York, New York 10022	Senior Vice President	None
Loren A. Erickson 399 Park Avenue New York, New York 10022	Senior Vice President	None
John Exter 399 Park Avenue New York, New York 10022	Senior Vice President	None
Stephen C. Eyre 399 Park Avenue New York, New York 10022	Senior Vice President	None
Robert W. Feagles 399 Park Avenue New York, New York 10022	Senior Vice President	None
John F. Fitzgerald 399 Park Avenue New York, New York 10022	Senior Vice President	None

Henry M. Hubshman, Jr. 90 Park Avenue New York, New York 10016	Senior Vice President	None
James F. Jaffray 399 Park Avenue New York, New York 10022	Senior Vice President	None
Norris O. Johnson 399 Park Avenue New York, New York 10022	Senior Vice President	None
Homer C. Lathrop 399 Park Avenue New York, New York 10022	Senior Vice President	None
P. Henry Mueller 399 Park Avenue New York, New York 10022	Senior Vice President	None
Eben W. Pyne 399 Park Avenue New York, New York 10022	Senior Vice President	None
Juan D. Sanchez 399 Park Avenue New York, New York 10022	Senior Vice President	None
George C. Scott 399 Park Avenue New York, New York 10022	Senior Vice President	None
Joseph P. Shaw 399 Park Avenue New York, New York 10022	Senior Vice President	None
John C. Slagle 55 Wall Street New York, New York 10015	Senior Vice President	None
John E. Thilly 399 Park Avenue New York, New York 10022	Senior Vice President	None
Hulbert W. Tripp 399 Park Avenue New York, New York 10022	Senior Vice President	Member, Committee for Registrant

Alfred M. Vinton 399 Park Avenue New York, New York 10022	Senior Vice President	None

Item 33. *Compensation of Underwriters.*

Not applicable. First National City Bank has received no commissions or other compensation or profits from Registrant as of the date of filing.

Item 34. *Financial Statements and Exhibits.*

(a) No financial statements are filed. Registrant has no assets or liabilities and has never had any assets or liabilities.

(b) Exhibits:

1. Resolution of Board of Directors of First National City Bank establishing Registrant—filed as Exhibit A to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.

2. Preliminary Prospectus of Registrant —filed as Part I to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.*

3(a). Form of Authorization for Commingling of Agency Accounts (individual account)—filed as Exhibit B-1

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*A copy of the Final Prospectus of Registrant will be filed as Part I to Registrant's Registration Statement on Form S-5 by an amendment to such Registration Statement and when so filed is hereby incorporated by reference as an Exhibit to this Registration Statement.

to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.

3(b). Form of Authorization for Commingling of Agency Accounts (joint account)—filed as Exhibit B-2 to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.

4(a). Specimen of receipt issued to participants upon admission to original or additional participation—filed as Exhibit C-1 to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.

4(b). Specimen of receipt issued to participants upon partial termination of participation—filed as Exhibit C-2 to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.

5. Form of Management Agreement between Registrant and First National City Bank—filed as Exhibit D to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day

as this Registration Statement, to which reference is hereby made.*

6. Form of Agreement between Registrant and First National City Bank relating to the availability of units of participation—filed as Exhibit E to Registrant's Registration Statement on Form S-5 under the Securities Act of 1933, filed the same day as this Registration Statement, to which reference is hereby made.*

SIGNATURE

Pursuant to the requirements of the Investment Company Act of 1940, the undersigned Registrant has caused this Registration Statement to be signed on its behalf in the City of New York and State of New York on the 20th day of April, 1966.

COMMINGLED INVESTMENT ACCOUNT OF
FIRST NATIONAL CITY BANK

By /s/ Robert L. Hoguet, Jr.
Robert L. Hoguet, Jr.
Chairman of Committee

Witness: /s/ Conrad F. Ahrens
Conrad F. Ahrens
Member of Committee

[U.S. Securities & Exchange Commission]
RECEIVED
April 20, 1966

*It is anticipated that the Management Agreement and the Agreement relating to the availability of units of participation will be signed prior to the proposed public offering of Registrant's units of participation. Copies of the executed Agreements will thereupon be filed as Exhibits to Registrant's Registration Statement on Form S-5 by an amendment to such Registration Statement and when so filed are hereby incorporated by reference as Exhibits to this Registration statement.

[Exhibit 7 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

EXHIBIT C-1

FIRST NATIONAL CITY BANK—COMMINGLED INVESTMENT ACCOUNT

YOUR ACCOUNT NUMBER	DATE OF TRANSACTION	FOR YOUR UNITS OWNED FULL	FOR YOUR UNITS OWNED PART	AMOUNT RECEIVED	VALUE PER UNIT	UNITS ACQUIRED FULL	UNITS ACQUIRED PART	PRESENT UNITS OWNED FULL	PRESENT UNITS OWNED PART

PARTICIPANT'S RECEIPT—NOT TRANSFERABLE

SPECIMEN

Received from the Participant the above AMOUNT RECEIVED for investment and commingling effectively with the funds of other customers of First National City Bank in the Commingled Investment Account (the "Commingled Account"), as provided for in the Declaration of Trust creating the Commingled Account and subscribed lawful investments thereof. Above UNITS ACQUIRED indicate the units of participation in the Commingled Account which are registered in the Participant's name on account of the funds so received.

PARTICIPANT

FIRST NATIONAL CITY BANK
COMMINGLED INVESTMENT ACCOUNT
[illegible]

BY

(Note: This receipt should be surrendered to the Bank upon any termination or whole or in part of the participation evidenced hereby. In the event of partial termination, a new receipt will be issued for the appropriate number of units.)

[Exhibit 8 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

EXHIBIT C-2

FIRST NATIONAL CITY BANK—COMMINGLED INVESTMENT ACCOUNT

TERMINATION DATE	PREVIOUS UNITS OWNED			UNITS TERMINATED		PRESENT UNITS OWNED		UNITS TERMINATED		VALUE PER UNIT	CHECK ENCLOSED
MO.	DAY	YR.	FULL	PART	FULL	PART	FULL	PART			

YOUR ACCOUNT NO.

PARTICIPANT'S RECEIPT—NOT TRANSFERABLE

SPECIMEN

In accordance with written notice of termination, the Participant's participation in the Commingled Investment Account ("Commingled Account") has been reduced by the number of UNITS TERMINATED, leaving registered in the Participant's name the above PRESENT UNITS OWNED, if any. In the event of complete termination, PRESENT UNITS OWNED is 000/000, and there is no continuing participation in the Commingled Account. Otherwise the participation continues to be invested and reinvested collectively with the funds of other customers of First National City Bank in the Commingled Account, as provided for in the current Prospectus of the Commingled Account and subsequent lawful amendments thereof.

FIRST NATIONAL CITY BANK
COMMINGLED INVESTMENT ACCOUNT
POST OFFICE BOX 3120, GRAND CENTRAL STATION
NEW YORK, N.Y. 10017

BY _____

(NOTE: This receipt should be surrendered to the Bank upon any termination in whole or in part of the participation evidenced hereby. In the event of partial termination, a new receipt will be issued for the appropriate number of units.)

[Exhibit 9 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of the First National City Bank]

April , 1966

To: Committee for Commingled Investment Account

This will confirm the arrangements for management, supervision and custody of the funds of customers invested through the Commingled Investment Account (the "Commingled Account"), as follows:

1. *Investment Management Services.* First National City Bank (the "Bank") will manage the investment and reinvestment of funds in the Commingled Account. Specifically, the Bank will maintain a continuous investment program for the Commingled Account, not inconsistent with its investment policy as set forth in the registration statement of the Commingled Account, as from time to time amended, under the Investment Company Act of 1940 and in the prospectus of the Commingled Account currently in use under the Securities Act of 1933. The Bank will determine what securities are to be purchased or sold for the Commingled Account and will execute transactions for the Commingled Account accordingly. The Commingled Account will have the benefit of the investment analysis and research, the review of current economic conditions and trends and the consideration of long-range investment policy now generally available to investment advisory customers of the Bank. The Bank will determine what portion, if any, of the Commingled Account should be held uninvested and what portion, if any, should be invested in Government obligations.

2. *Allocation of Costs and Expenses.* Members of your Committee who are officers or employees of the Bank shall receive no separate compensation for their services for the

Commingled Account. The Bank shall, however, reimburse the Commingled Account for such compensation and expenses, if any, as the Committee shall have authorized to be paid out of the Commingled Account to any member who is not an officer or employee of the Bank. The Bank will furnish, without expense to the Commingled Account, such administrative and clerical services, including the calculations of asset value, that are required to be made for the Commingled Account, and such office space and facilities as may be required, and will maintain up-to-date records of the Participants in the Commingled Account, their addresses and the extent of their participations. Except to the extent required by the Comptroller of the Currency to be paid by the Bank, the following amounts will be paid directly from the Commingled Account:

(a) brokers' commissions,

(b) cost of independent professional services, such as legal, auditing or accounting services,

(c) taxes or governmental fees attributable to transactions for the Commingled Account or to income from Commingled Account assets,

(d) cost of maintaining the registration and qualification of the Commingled Account under laws administered by the Securities and Exchange Commission or under other applicable regulatory requirements (except that the cost of printing, publication and distribution of current reports to Participants will be paid by the Bank), and

(e) cost of preparation and distribution of notices to Participants and proxy statements. The Commingled Account shall in no event be charged with any costs, fees or other expenses arising in connection with the organization of the Commingled Account, including its initial registration and qualification under the Investment Company Act of 1940 and under the Securities Act of 1933, the initial determination of its tax status and any rulings obtained for this purpose, its initial registration and quali-

fication under the laws of any State or its approval by the United States Comptroller of the Currency or any other Federal authority, and all of such costs, fees and expenses have been or will be paid by the Bank.

3. *Custody and Safekeeping.* The Bank will have custody of and keep safely at all times the assets of the Commingled Account. Securities included among such assets (other than bearer securities) shall be registered in the name of the Bank or one of its registered nominees, with or without indication of fiduciary capacity. The Bank shall be fully responsible for the fidelity and liabilities of any such nominee.

4. *Transactions in the Account.* All transactions of purchase or sale for the Commingled Account shall be promptly reported to the Committee by the Bank. Except for (i) exchanges of securities held in the Commingled Account for other securities in connection with any properly authorized reorganization, recapitalization, merger, consolidation, split-up or combination of shares, change of par value, conversion or otherwise, (ii) any exchange of securities in temporary form for securities in definitive form, (iii) the surrender of bonds or other obligations at maturity or when called for redemption, or (iv) the surrender of securities to representatives of all holders of securities of the same class for their protection in reorganization or similar proceedings, securities held for the Commingled Account shall be delivered only against payment

(a) in lawful money of the United States paid to the Bank or its agent,

(b) by certified check upon, or treasurer's or cashier's check of, a New York bank delivered to the Bank or its agent, or

(c) if delivery is made in New York, by credit to the account of the Bank or its agent by the New York Stock Clearing Corporation,

provided, however, that the Bank or its agent may accept an uncertified check in the case of any transaction where

the payment involved does not exceed $1,000. Orders to sell securities for the Commingled Account will be placed only with established brokers or dealers. The Bank will maintain in its Custodian Department one or more cash accounts, identified as assets of the Commingled Account and subject only to draft or order by the Bank as custodian or agent. All monies received by the Bank by or for the Commingled Account shall be deposited in said account or accounts.

5. *Collections.* The Bank will collect, receive and deposit for the Commingled Account all income and other payments with respect to the securities in the Commingled Account, will execute ownership and other certificates and affidavits for all federal, state or local tax purposes, and will take all other action necessary in connection with the collection, receipt and deposit of such income and other payments, including but not limited to the presentation for payment of all coupons and other income items requiring presentation on all securities which may mature or be called, redeemed, retired or otherwise become payable and the endorsement for collection by the Commingled Account of all checks, drafts or other negotiable instruments. The Bank will receive and collect all stock dividends, rights and other similar items.

6. *Distributions to Participants.* The Bank will, in accordance with instructions of the Committee, act as paying or disbursing agent for all funds distributed to Participants whether as income, profits, amounts payable on termination, or otherwise.

7. *Proxies, Notices, etc.* The Bank will promptly transmit to the Committee all notices, proxy forms and proxy statements and all other requests and announcements furnished to the Bank or its nominee as registered holder of securities in the Commingled Account and will execute and deliver or cause its nominee to execute and deliver such proxies or other authorizations in such manner as the Committee shall direct.

8. *Disbursements.* In so far as funds are available in the Commingled Account for the purpose, the Bank will disburse from such funds amounts required to pay such bills, statements and other obligations as are payable out of the Commingled Account pursuant to the provisions of paragraph 2 hereof or as are otherwise approved by the Committee, such approval to be evidenced by the record of the minutes of a meeting of the Committee or by the signature of two members thereof.

9. *Books, Records and Accounts.* The Bank will maintain proper books of account and complete records of all transactions in the Commingled Account (whether in the investment account or the deposit account) and will render statements or copies thereof from time to time as requested by the Committee or as may otherwise be required by law. The Bank will assist in the preparation of reports to Participants, to the Securities and Exchange Commission, to the Comptroller of the Currency and to others, and in all audits of the Commingled Account.

10. *Compensation of the Bank.* For all services to be rendered and payments to be made by the Bank as described in this agreement, the Bank shall be entitled to withdraw from the Commingled Account as of the last day of each fiscal quarter and pay to itself a fee of 1/8th of 1% of the average of the net asset values of the Commingled Account taken on each valuation date throughout the quarter for purposes of determining the asset value of units of participation, and no more. If for any reason the determination of such asset value has been lawfully suspended for a period including any such quarter, the Bank's compensation payable at the end of such quarter shall be computed on the basis of the value of the net assets in the Commingled Account as last determined prior to such quarter.

11. *Avoidance of Inconsistent Positions.* In connection with purchases or sales of securities for the Commingled Account, neither the Bank nor any of its directors, officers or employees will act as a principal or agent or receive any

commissions. The Bank will not itself become a Participant in the Commingled Account. Where the Bank is called upon to give advice to its customers concerning the Commingled Account, it will act solely as investment adviser for such customers with disclosure of the position of the Bank with respect to the Commingled Account.

12. *Duration and Termination.* This agreement shall remain in force until December 31, 1967, and from year to year thereafter, but only so long as such continuance is approved at least annually either by the Committee, including specific approval by a majority of the Committee who are not persons affiliated with the Bank, or by the vote of Participants having a majority interest in the Commingled Account. This agreement may, on 60 days' prior written notice, be terminated at any time without the payment of any penalty, by the Committee, by the vote of Participants having a majority interest in the Commingled Account, or by the Bank. This agreement shall automatically terminate in the event of its assignment by the Bank or if it shall not be approved by Participants having a majority interest in the Commingled Account at the first meeting of the Participants. In interpreting the provisions of this paragraph 12, the definitions contained in Section 2(a) of the Investment Company Act of 1940 (particularly the definitions of "affiliated person" and "assignment") shall be applied, except that a "majority interest" in the Commingled Account shall mean more than 50% of the units of participation into which the Commingled Account is at the time divided.

13. *Amendments Hereof.* No provision of this agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Bank, and no amendment of this agreement shall be effective until approved by the vote of Participants having a majority interest in the Commingled Account.

If the foregoing conforms to your understanding of the arrangements, please so indicate by signing the form of acceptance on the accompanying counterpart hereof.

FIRST NATIONAL CITY BANK

By_____

[Exhibit 10 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of the First National City Bank]

April , 1966

To: Committee for Commingled Investment Account

This will confirm the arrangement for including in the Commingled Investment Account (the "Commingled Account") funds of customers of First National City Bank (the "Bank") as follows:

1. You agree that, except to the extent otherwise required by law or inconsistent with the provisions of the prospectus of the Commingled Account currently in use under the Securities Act of 1933 (the "Prospectus"), participation in the Commingled Account will at all times be available at the request of appropriate officers of the Trust and Investment Division of the Bank to persons who have validly appointed the Bank managing agent pursuant to an appropriate authorization for commingling of agency accounts as described in or attached to the Prospectus.

2. Participation in the Commingled Account will be available at net asset value, determined in accordance with the Prospectus.

3. The Bank agrees not to give any information or to make any representations with respect to the Commingled Account other than the information and representations contained in the Prospectus or related registration statement. The Bank further agrees to comply with all applicable restrictions of governmental authorities with respect to any publicity to be given to the Commingled Account and to the means by which participations in the Commingled Account are to be made available.

4. This agreement shall remain in force until December 31, 1967, and from year to year thereafter, but only so long as such continuance is approved at least annually either by the Committee, including specific approval by a majority of the Committee who are not persons affiliated with the Bank, or by the vote of participants having a majority interest in the Commingled Account. This agreement may, on 60 days' prior written notice, be terminated at any time without the payment of any penalty by the Committee, by the vote of participants having a majority interest in the Commingled Account, or by the Bank. This agreement shall automatically terminate in the event of its assignment by the Bank. In interpreting the provisions of this paragraph 4, the definitions contained in section 2(a) of the Investment Company Act of 1940, particularly the definitions of "affiliated person" and "assignment", shall be applied, except that a "majority interest" in the Commingled Account shall mean more than 50% of the units of participation into which the Commingled Account is at the time divided.

5. No provision of this agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Bank.

6. This agreement has been entered into in view of the Securities and Exchange Commission's position that the Bank be regarded as statutory principal underwriter of the Commingled Account. By entering into this agreement, the Bank does not concede that it is the principal underwriter of the Commingled Account.

If the foregoing conforms to your understanding of the arrangement, please so indicate by signing the form of acceptance on the accompanying counterpart hereof.

FIRST NATIONAL CITY BANK

By_____

The foregoing is confirmed and accepted as of the _____.

[Exhibit 10 (continued) to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of DeBevoise, Plimpton, Lyons & Gates]

April , 1966

Committee for the Commingled Investment
Account of First National City Bank
399 Park Avenue
New York, New York 10022

Dear Sirs:

We have acted as counsel for First National City Bank in the establishment of its Commingled Investment Account (the "Commingled Account") and are counsel for the Commingled Account. We have participated in the preparation of the Registration Statement on Form S-5 filed by the Commingled Account with the Securities and Exchange Commission under the Securities Act of 1933 on April , 1966, and the amendments thereto (the "Registration Statement"), with respect to 500,000 units of participation in the Commingled Account.

In so acting, we have made such examination of law and examined such records and documents as in our judgment

are necessary or appropriate to enable us to render the opinion expressed below.

We are of the following opinion:

1. The Commingled Account is a collective investment fund duly organized and existing pursuant to applicable regulations of the United States Comptroller of the Currency.

2. Upon admission of the funds of a participant to a participation in the Commingled Account, such participant will have a lawful, fully paid and nonassessable interest in the Commingled Account.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement and to the use of our name as "Legal Counsel" in the Prospectus constituting Part I of the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933 or the Rules and Regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

[Exhibit 12 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

PROSPECTUS / JUNE 14, 1966

COMMINGLED INVESTMENT ACCOUNT of FIRST NATIONAL CITY BANK

Purpose

To make First National City Bank's investment advisory services available to investors with $10,000 or more.

Investment Policy

To invest principally in common stocks and convertible securities offering opportunity for long-term growth of capital and of income.

Participations

Participations acquired and withdrawn at net asset value.

No charge for admission or withdrawal — each dollar received participates in full.

Minimum participation accepted—$10,000.
Optional additions—$1,000 or more.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

COMMINGLED INVESTMENT ACCOUNT

of

FIRST NATIONAL CITY BANK

Purpose

In order to make its investment advisory services and experience in managing equity portfolios available to a larger number of customers, First National City Bank (the "Bank") accepts custody and investment discretion as to accounts with a minimum amount of $10,000 pursuant to an agreement signed by the customer authorizing the Bank to invest such funds, together with the funds of other customers who have given the Bank the same authority, in a single collective account (the "Commingled Account") in which each such customer shares in proportion to the amount of his funds which are included. (A detachable form of authorization for an individual account is included in this Prospectus at page 13.)

Supervision and Management

Supervision of the Commingled Account is in the hands of a committee (the "Committee") of three officers in the Trust and Investment Division of the Bank together with two individuals who are not affiliated with the Bank. The Bank is responsible for the management of the investments in the Commingled Account, as more fully described under the heading "Management Services", and the full facilities and resources of the Bank are available for investment analysis and research, review of current economic conditions and trends, and consideration of long-range investment policy.

Investment Policy

The policy of the Commingled Account is to invest in securities which offer the opportunity for long-term growth of capital and of income. Investments are made principally in common stocks and in securities convertible into common stocks, but, depending upon the interpretation by the Bank's Trust and Investment Division of business, economic and market conditions, all or part of the funds of the Commingled Account may be invested at any time in other securities, including corporate preferred stocks, bonds, debentures or other evidences of indebtedness, and obligations issued or guaranteed by the United States or an instrumentality thereof.

The funds in the Commingled Account are invested in a carefully selected portfolio diversified among various industries, and it is not intended to concentrate more than 25% of the Commingled Account in investments in any one particular industry. Purchases and sales of securities will be made on the basis of investment considerations and not for short-term profit.

The foregoing investment policies and the investment restrictions stated below may be changed only when permitted by law and consented to by the vote of a majority of the units of participation in the Commingled Account.

Investment Restrictions

Funds in the Commingled Account will not be used in the underwriting of securities, or applied to the purchase of real estate, interests in real estate investment trusts, commodities or commodity contracts, or invested in companies for the purpose of exercising control or management, or invested in

the securities of investment companies. Funds in the Commingled Account will not be lent to others, although they may be applied to the purchase of bonds and debt securities of a type publicly distributed or customarily purchased by institutional investors. The Commingled Account will not acquire any security or other property if immediately after such acquisition and as a result thereof the following requirements would not be met: at least 75% of the total assets in the Commingled Account taken at market value are represented by cash and cash items, securities issued or guaranteed by the United States or an instrumentality thereof and other securities which, as to any one issuer, do not represent more than 10% of the voting securities of such issuer or more than 5% of the value of the total assets in the Commingled Account. The Commingled Account will not engage in margin transactions or short sales, participate in a joint trading account, or borrow money.

The Commingled Account is also subject to applicable rules and regulations of the United States Comptroller of the Currency and is registered under the Investment Company Act of 1940. Such registration does not involve any supervision by the Securities and Exchange Commission of the management or investment practices or policies of the Commingled Account.

Units of Participation

For convenience in determining the proportionate interest in the Commingled Account of each participating customer ("Participant"), the Commingled Account is divided into units of equal value, and the proportionate interest of each Participant is expressed by the number of such units allocated to such Participant. (In the case of joint accounts, the term "Participant" refers to both customers or the survivor of them.) Each unit represents an equal interest in the Commingled Account and no unit has priority or preference over any other with respect to any liquidation of the Commingled Account or any other rights or privileges. The total number of units of participation is not limited. Fractions of units, carried out to three decimal places, are used, and references to a "unit" or "units" include the fraction or fractions thereof, if any. No Participant has or is deemed to have exclusive ownership of any particular asset or investment of the Commingled Account.

A receipt is issued to each Participant showing the units of participation credited to his account. The receipts are not themselves transferable. Units of participation may be transferred only to persons who have validly appointed the Bank as managing agent, by application to the Bank accompanied by the surrender of a receipt covering the units to be transferred. Transfer of less than the total participation of a Participant is permitted only if the aggregate net asset value both of the units remaining in the transferor's account and of the units in the transferee's account after the transfer is not less than $10,000 each.

Determination of Net Asset Value

The original value of each unit of participation upon the establishment of the Commingled Account was arbitrarily set at $10, and Participants included prior to 12:00 midnight, New York time, June 13, 1966, acquired one unit for every $10 invested. Thereafter, the net asset value of each unit is determined as of the close of business on each of the specified valuation dates by dividing the net asset value of the Commingled Account as of the close of business on such valuation date by the number of units of participation then outstanding, the result being adjusted to the nearer cent.

The valuation dates as of which the net asset alue of the Commingled Account is determined e: (*a*) every Tuesday (commencing Tuesday, ne 14, 1966), if a day (a "Business Day") which both the Bank and the New York ock Exchange are open for business, or if t a Business Day, then the next succeeding y which is a Business Day, (*b*) any other day ommencing Wednesday, June 15, 1966) as of hich the net asset value of the Commingled ccount is determined for the purpose of permitng terminations as provided under the heading Termination of Participations", and (*c*) in any vent, on the last day of February, May, August nd November in each year. The Committee hall be free at any time and from time to time change the valuation dates described in clause (*a*) above upon 30 days' notice to the Particiants, provided that the frequency of such valuaion dates shall not be decreased to less than a eekly basis without the consent of Participants aving at the time of consent more than 50% of he units of participation.

The net asset value of the Commingled Acount is an amount which reflects calculations ade as follows (with estimates used where ecessary or appropriate):

(1) A security listed on a national stock exchange is valued on the basis of prices or quotations on such exchange on the valuation date, or if such exchange is not open on such date, then on the basis of prices or quotations on such exchange on the next preceding date on which such exchange was open. If sales are reported for the date as of which the security is to be valued pursuant to the preceding sentence, the security is valued at its last sale price on such date; if no sales are reported for such date, the security is valued at the mean of the closing asked and bid prices on such date. (If a security is listed on two or more national stock exchanges, one of which is either the New York Stock Exchange or the American Stock Exchange, the prices or quotations on the New York Stock Exchange or American Stock Exchange are used.)

(2) A security which is not listed on a national stock exchange but which is traded in the over-the-counter market is valued at the mean of the closing asked and bid prices on the valuation date (or on the next preceding date for which such prices are available if not available for the valuation date) supplied by two or more dealers making a primary market in such security. Every other asset of the Commingled Account is valued at its fair market value as of the close of business on the valuation date, determined either by reference to values supplied by a generally accepted pricing or quotation service or by taking into consideration quotations furnished by one or more reputable sources, such as pricing or quotation services, securities dealers, brokers or investment bankers, values of comparable property, appraisals or such other information or circumstances as the Committee considers relevant.

(3) An investment purchased and awaiting payment against delivery is included for valuation purposes as a security held, and an account payable is set up to reflect the purchase price, including brokers' commissions and other expenses incurred in the purchase thereof but not disbursed as of the valuation date.

(4) An investment sold but not delivered pending receipt of proceeds is valued at the net sales price.

(5) Brokers' commissions, taxes and other expenses which may be incurred in connection with the future purchase or sale of portfolio securities as a result of admissions to or terminations of participation occurring as of the valuation date are not considered in valuing the assets of the Commingled Account as of such valuation date.

(6) Uninvested cash is valued at its face amount.

(7) The value of any dividends, including stock dividends, or rights which may have been declared on securities in the portfolio but not received by the Commingled Account as of the close of business on the valuation date are included as an asset of the Commingled Account if the security upon which such dividends or rights were declared is included and is valued ex-dividend or ex-rights.

(8) Interest accrued on any interest-bearing security in the portfolio is included as an asset of the Commingled Account if such accrued interest is not otherwise included in the valuation of the underlying security. Other accrued income is also included to the date of calculation.

(9) All reserves, liabilities, expenses, taxes and other charges due or accrued which in the discretion of the Committee are properly chargeable to the Commingled Account up to the date of calculation are deducted. An estimate of the fee chargeable by the Bank for investment management and other services and accrued to date is included as an expense.

(10) Each admission to and termination of a participation is reflected no later than in the calculation of net asset value as of the first valuation date following the valuation date as of which such admission or termination takes place, but no such admission or termination taking place as of a valuation date is taken into consideration in the calculation of net asset value for such date.

The computation of the net asset value of the Commingled Account and of the units of participation which is made as of each valuation date is completed within the two Business Days next following such date.

Admission to the Commingled Account

Each admission to participation in the Commingled Account is made on the day the written request of the Bank for such admission is received by the Committee, if such day is both a valuation date and a Business Day, or, if such day is not both a valuation date and a Business Day, on the next succeeding day which is both, and is made on the basis of the net asset value of the units of participation as determined for the valuation date on which admission is made.

The minimum acceptable initial participation by any Participant is $10,000. Except for participations resulting from distributions of net long-term capital gains (see "Distributions and Federal Tax Status"), each subsequent additional participation by a Participant must be at least $1,000. In no event, however, will a participation be accepted if immediately after making such investment the Participant would hold units of participation the aggregate net asset value of which would exceed either (*a*) $500,000 or (*b*) 10% of the then net asset value of the Commingled Account.

The Bank may not itself become a Participant.

Termination of Participations

A participation may be terminated in whole or in part, on the basis of the net asset value of the units of participation being terminated and without any charge for termination, pursuant to an irrevocable written notice of termination, accompanied by the receipt or receipts issued to the Participant with respect to the units of participation being terminated, delivered to any office of the Bank in the State of New York on any day on which the Bank is open for business. However, no Participant may terminate less than all of his units of participation in any case where the aggregate net asset value of the units remaining would be less than $10,000. If delivery of a notice of termination, accompanied by the receipt or receipts issued with respect to the units of participation being terminated, is made before 1:00 P.M. (New York City time) on a Business Day, the net asset value is determined as of the close of business

on that day. If such delivery is made after 1:00 P.M. on a day which is a Business Day or is made at any time during a day when the Bank is open but the New York Stock Exchange is not open, the net asset value is determined as of the close of business on the next day on which the New York Stock Exchange is open. The value of units of participation on termination may be more or less than the Participant's cost, depending on the market value of the securities held by the Commingled Account at the time of termination.

If the Bank is notified of the death or adjudicated incompetency of any Participant (or, in the case of a joint account, the death or adjudicated incompetency of both persons creating such account or the survivor of them), such notification shall be treated as a notice of termination of the participation owned by such Participant. Such notice of termination need not be accompanied by the receipt or receipts issued to the Participant with respect to the units of participation being terminated, but the Bank shall use its best efforts to have such receipt or receipts surrendered as soon as reasonably practicable thereafter.

Distributions upon termination of participations normally will be made in cash within seven days of the day on which the notice of such termination is delivered to the Bank. However, if in its sole discretion the Committee deems it advisable or necessary, such distributions may be made in kind, or partly in cash and partly in kind.

Any distribution upon termination as the result of the death or adjudicated incompetency of a Participant shall be held by the Bank at the Bank's expense in such Participant's individual investment advisory account until such time as such Participant's legal representative shall have been appointed and shall have furnished proof satisfactory to the Bank of his right to receive such distribution. The Bank shall to the extent practicable keep all cash in such accounts invested in United States Treasury bills but shall not otherwise invest or reinvest the assets of such accounts or be obligated to take any other action in respect thereof.

The right to terminate a participation or to receive a distribution with respect to any such termination within seven days as stated above may be suspended for any period during which trading on the New York Stock Exchange is restricted or such Exchange is closed (other than customary weekend and holiday closings), for any period during which an emergency exists as a result of which disposal of portfolio securities or determination of the net asset value of the Commingled Account is not reasonably practicable, and for such other periods as the Securities and Exchange Commission may by order permit. If at the time of any suspension of the right to receive distributions a Participant shall have given a notice of termination but shall not yet have received a distribution, such Participant shall have the right to withdraw the notice of termination.

Distributions and Federal Tax Status

Cash distributions from the net investment income, if any, of the Commingled Account will be made to the Participants, ratably on their units of participation, at least quarter-annually. In the event of realized capital losses, distributions of investment income may result in a return of capital. It is the policy of the Committee to distribute each year substantially all of the net income (including the excess, if any, of net short-term capital gain over net long-term capital loss) of the Commingled Account. For Federal income tax purposes, each such distribution will be taxable to each Participant as ordinary income.

Distribution of net long-term capital gains realized from the sale of securities in the Commingled Account will be made to Participants, ratably on their units of participation, on an

annual basis shortly before or after August 31, the end of the Commingled Account's fiscal year. Such distributions will be paid in units of participation taken at their net asset value unless the Participant elects to receive payment entirely in cash, and will be taxable to each Participant, whether taken in units of participation or in cash, as long-term capital gain irrespective of the length of time he has been a Participant. To the extent that the net asset value of units of participation is reduced below a Participant's cost by distribution of net long-term capital gain realized on the sale of securities, such distribution is in effect a return of capital, although taxable as stated above. Distributions of net long-term capital gain are not eligible for the $100 dividend-received exclusion.

The Commingled Account expects to qualify as a "regulated investment company" within the meaning of the Internal Revenue Code. (Such regulation does not involve supervision of management or investment practices or policies.) As such, and by complying with the provisions of the Code applicable to regulated investment companies, the Commingled Account will be relieved of liability for Federal income tax on net income and net long-term capital gains which are distributed.

Management Services

The Commingled Account is managed by the Bank pursuant to a management agreement (subject to the approval of the Participants at their first annual meeting, scheduled for November 16, 1966). The agreement provides that the Bank will maintain a continuous investment program for the Commingled Account, not inconsistent with its stated investment policy, will determine what securities are to be purchased or sold for the Commingled Account and will execute transactions for the Commingled Account accordingly. The agreement further provides that the Bank agrees to furnish all custodian, administrative and clerical services, office space and facilities required for the operation of the Commingled Account and to reimburse the Commingled Account for the compensation and expenses, if any, paid by the Commingled Account to the members of the Committee. The Bank also agrees to pay all costs and expenses arising in connection with the organization of the Commingled Account, including its initial registration and qualification under the Federal securities laws and under other applicable regulatory requirements, but the cost of maintaining such registration and qualification (other than the cost of printing, publication and distribution of current reports to Participants, which will be paid by the Bank) will be an expense of the Commingled Account. The cost of independent professional services, such as legal, auditing or accounting services (other than in connection with the organization of the Commingled Account), and the cost of preparation and distribution of notices to Participants and proxy statements will also be expenses of the Commingled Account.

For the Bank's services, the Commingled Account is charged as of the last day of each fiscal quarter with a fee payable to the Bank equal to ⅛ of 1% of the average of the net asset values of the Commingled Account taken on each valuation date during such quarter (or approximately ½ of 1% on an annual basis).

The management agreement is renewable annually after December 31, 1967, provided that such continuance is approved annually by the Committee, including a majority of the members of the Committee who are not affiliated with the Bank, or by the vote of Participants having more than 50% of the units of participation. The agreement may, on sixty days' notice, be terminated by the Committee, by the vote of a majority of the units of participation as set forth in the agreement or by the Bank, and will terminate automatically if assigned by the Bank. Amendments of the agreement must be approved by the Comptroller of the Currency and by the vote of Participants having more than 50% of the units of participation.

Brokerage Commissions

In placing orders for the purchase and sale of portfolio securities for the Commingled Account pursuant to the management agreement, the Bank's primary objective is to obtain the most favorable prices and execution of orders available. While there is no undertaking or agreement to do so, it is the Bank's practice to place a major portion of such brokerage business with brokers and dealers who supply supplementary research and statistical information or market quotations to the Bank as the Commingled Account's investment adviser. This practice is not followed if as a result the Commingled Account would not obtain the most favorable prices and execution. The Bank does not believe that its expenses in furnishing investment management will be significantly affected by the receipt of such research and statistical information and market quotations. There is no intention to place portfolio transactions with any particular brokers or dealers or group thereof.

Members of the Committee

The members of the Committee are as follows:

ROBERT L. HOGUET, JR., *Chairman*
399 Park Avenue, New York, N. Y.
Executive Vice President of First National City Bank in charge of the Bank's Trust and Investment Division and Chairman of its Investment Policy Committee.

CONRAD F. AHRENS
399 Park Avenue, New York, N. Y.
Vice President of First National City Bank in charge of the Investment Research Department of the Bank's Trust and Investment Division and a member of its Investment Policy Committee.

JOHN D. LOCKTON
570 Lexington Avenue, New York, N. Y.
Treasurer of the General Electric Company, Chairman of the Trustees of the General Electric Pension Trust and other General Electric trusts, and a Trustee of the Elfun Trusts, a mutual fund for General Electric employees.

PAUL SAUREL
300 Park Avenue, New York, N. Y.
A partner of the law firm of Morris & McVeigh.

HULBERT W. TRIPP
399 Park Avenue, New York, N. Y.
Senior Vice President of First National City Bank in the Bank's Trust and Investment Division and a member of its Investment Policy Committee since January 1965. Member of the Bank's Trust Board since 1963. Financial Vice President of the University of Rochester prior to January 1965, and since that date, Chairman of its Investment Committee.

All positions shown have been held for more than five years unless otherwise indicated, except that Messrs. Hoguet and Ahrens have been associated with the Bank in responsible positions for more than five years, although not at all times in the positions shown.

No compensation is paid out of the Commingled Account to any of the members of the Committee who are affiliated with the Bank. The Committee determines the compensation paid to the members of the Committee who are not affiliated with the Bank, and the Commingled Account is reimbursed by the Bank. It is expected that the members of the Committee who are not affiliated with the Bank will in the aggregate receive fees of $5,000 during the Commingled Account's first fiscal year ending August 31, 1966, and fees of $10,000 for the succeeding full fiscal year.

Meetings of Participants

A meeting of Participants for electing members of the Committee and approving the appointment of auditors for the year and for transacting other business is held annually at 11:00 A.M. on the third Wednesday in November, if not a legal holiday, or, if a legal holiday, then on the next succeeding day not a legal holiday. Special meetings of Participants may be called at any time by any member of the Committee.

All Participants' meetings are held at 399 Park Avenue, New York City, unless a different place of meeting within the City of New York is specified in the notice of the meeting. Notice of the time, place and purpose or purposes of each meeting is mailed, at least 20 days, but not more than 50 days, prior to the meeting, to each Participant, at his address as it appears on the books of the Bank at the time of such mailing, except that persons becoming Participants after the mailing of such notice receive notice of the meeting at the time they become Participants. Notice of any adjourned meeting need not be given.

Each Participant is at every meeting of Participants entitled to such number of votes, in person or by proxy, as is equal to the number of units of participation (including fractions of units) held by such Participant.

All matters are decided by a vote of the majority of the votes validly cast except as otherwise specified in this Prospectus or in any agreement which by its terms requires a higher vote for the approval, continuance or termination of such agreement and except as otherwise required by provisions of the Investment Company Act of 1940. The right to vote by proxy exists only if the instrument authorizing such proxy to act has been executed in writing by the Participant or by his duly authorized attorney.

The presence at any Participants' meeting, in person or by proxy, of Participants holding units of participation aggregating a majority of the total number of units constitutes a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the Participants present in person or by proxy, or if no Participant is present in person or by proxy, any member of the Committee present, may adjourn the meeting *sine die* or from time to time. Any business that might have been transacted at the meeting originally called may be transacted at any adjourned meeting at which a quorum is present.

Election of Members of the Committee

The Committee consists of five members. The number of members may be increased or decreased by resolution of the Committee or action of the Participants, provided that the number shall not be less than five. Each member (whenever elected) holds office until his successor has been elected and qualified unless he resigns or his office becomes vacant by his death or removal.

At least 40% of the members of the Committee at all times will be persons who are not affiliated with the Bank (except as otherwise temporarily permitted by the provisions of the Investment Company Act of 1940 in the case of death, disqualification or bona fide resignation). The members of the Committee are elected annually, by a plurality of the votes cast at such election, at the annual meeting of Participants, or, in the event of any failure to elect the members at the annual meeting, at a special meeting of Participants, provided that the notice of such special meeting shall mention such purpose.

If any vacancy occurs in the Committee by reason of death, resignation, removal or otherwise, or if the authorized number of members of the Committee is increased, the members then in office continue to act, and such vacancies or newly created memberships (if not previously filled by the Participants at an annual or special meeting) may be filled by a majority vote of the

embers then in office, although less than a quo-um, provided that immediately after filling such acancy at least two-thirds of the members then olding office have been elected to such office y the Participants. In the event that at any ime (other than the time preceding the first nnual meeting of Participants) less than a majority of the members holding office at that time were so elected by the Participants, a meeting of the Participants shall be held promptly, and in any event within 60 days, for the purpose of electing members to fill any existing vacancies in the Committee unless the Securities and Exchange Commission shall by order extend such period.

Accounting Records, Audits and Financial Reports

The accounting records of the Commingled Account are kept on the basis of a fiscal year ending on the last day of August of each year.

At least semi-annually, the accounting records of the Commingled Account are audited by Haskins & Sells, or other independent public accountants selected in accordance with the provisions of the Investment Company Act of 1940. The compensation and expenses of the auditors are charged against and payable out of the assets of the Commingled Account.

The Commingled Account, at least semi-annually, transmits to Participants reports, based on the audit, containing such financial statements and other information as is required by applicable laws and regulations. The cost of printing, publication and distribution of such reports to Participants is borne by the Bank.

Termination of the Commingled Account

The Commingled Account will continue without limitation of time, provided that the Committee may, if authorized by the vote of Participants having more than 50% of the units of participation, at any time terminate the Commingled Account. (See, however, "Litigation" below.) Thereafter, no further moneys shall be admitted to a participation and no terminations shall be permitted, and the Committee shall, after all expenses and liabilities of the Commingled Account are paid or satisfied, distribute at one time or from time to time the assets of the Commingled Account to the Participants, either in cash or in kind, or partly in cash and partly in kind.

Status of the Commingled Account

The Commingled Account was established in the State of New York on September 21, 1965 and is operated as a collective investment fund pursuant to applicable regulations of the Comptroller of the Currency. The Commingled Account is also deemed to be an investment company of the diversified, open-end management type, and the Bank may be deemed to be its statutory underwriter.

Litigation

Two legal proceedings are pending which might affect the status of the Commingled Account. The first, against the Comptroller of the Currency, was brought on April 25, 1966. The Investment Company Institute (an association of investment companies, investment advisers to investment companies and underwriters of investment company securities) and five of its members filed a complaint in the United States District Court for the District of Columbia against the Comptroller, asking the court to set aside the Comptroller's regulation and the specific approval thereunder pursuant to which the Commingled Account is operated, on the

ground that the Comptroller has unlawfully authorized activities which violate certain provisions of the Banking Act of 1933 aimed at divorcing commercial and investment banking and which are not permitted to banks organized under New York State law. Neither the Bank nor the Commingled Account was named as a party in the complaint.

The second suit was commenced on May 5, 1966 by the National Association of Securities Dealers, Inc. (an association of brokers and dealers in over-the-counter securities, including the shares of open-end investment companies). The NASD filed a petition in the United States Court of Appeals for the District of Columbia Circuit asking the court to review and set aside certain orders of the Securities and Exchange Commission granting the Commingled Account exemptions from the provisions of Sections 10(b)(2), 10(b)(3) and 10(c) of the Investment Company Act of 1940 so as to permit a majority of the members of the Committee to be persons who are affiliated with the Bank. The petition for review alleges that the Commission exceeded its authority by granting exemptions which nullify fundamental statutory policy and that the Commission failed to give proper consideration to an argument raised by the NASD in the course of the administrative proceedings to the effect that the Committee will not exercise the directorial functions contemplated by the Investment Company Act of 1940. The Bank has moved to intervene in this proceeding.

A decision adverse to the Comptroller of the Currency in the first case or the Securities and Exchange Commission in the second might necessitate the termination of the Commingled Account and the distribution of its net assets or the resignation of the members of the Committee who are affiliated with the Bank and the termination by the Bank of the management agreement.

June 14, 1966

ROBERT L. HOGUET, JR., *Chairman*
CONRAD F. AHRENS
JOHN D. LOCKTON
PAUL SAUREL
HULBERT W. TRIPP
Members of the Committee

Commingled Investment Account of First National City Bank

Statement of Assets and Liabilities — June 2, 1966

Assets

Cash, held by First National City Bank	$220,000
Committee fees receivable from First National City Bank	2,500
	$222,500

Liabilities

Fees due unaffiliated Committee members	2,500
Contingencies (see note)	
Net assets applicable to units of participation outstanding	$220,000
Net asset value per unit of participation ($220,000 ÷ 22,000 units outstanding; 500,000 units registered)	$ 10.00

Note—Information pertaining to pending legal proceedings is given in the Prospectus under the heading "Litigation".

Opinion of Independent Certified Public Accountants

To the Committee and Participants of the
Commingled Investment Account of
First National City Bank:

We have examined the Statement of Assets and Liabilities of the Commingled Investment Account of First National City Bank as of June 2, 1966. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Assets and Liabilities presents fairly the financial position of the Commingled Investment Account of First National City Bank at June 2, 1966, in conformity with generally accepted accounting principles.

HASKINS & SELLS

New York
June 6, 1966

AUTHORIZATION FOR COMMINGLING OF AGENCY ACCOUNTS

To: FIRST NATIONAL CITY BANK
P. O. Box 3130, Grand Central Station
New York, N. Y. 10017

In order to obtain your investment management services, I hereby constitute you my attorney and managing agent with discretion as to the investment of any funds at any time held in my investment advisory account with you. You may invest such funds, together with the funds of other customers who have given you the same authority, through a single collective account (the "Commingled Account") consisting of cash and securities in your custody and described in the current Prospectus for the Commingled Account, a copy of which I have received and by the provisions of which I agree to be bound. Except as otherwise required by the Investment Company Act of 1940 or any rule or regulation of the Securities and Exchange Commission thereunder or by any regulation or ruling of the Comptroller of the Currency of the United States, you may as my attorney and agent make any changes in the management or operation of the Commingled Account.

Your authority to act under this letter shall continue until revoked in writing by me or until my death or adjudicated incompetency. It is understood that you shall not, however, be liable for continuing to act after my death or incompetency if you shall not have received notice thereof. If your authority to act under this letter shall be terminated while my account is invested through the Commingled Account, my participation in the Commingled Account shall be terminated and liquidated in the manner described in the Prospectus of the Commingled Account current at the time of such termination.

_____ _____
(Date) (Signature)

Please Print:

NAME _____ | | | |
(First) (Middle) (Last) Social Security Number or Taxpayer Identification Number

ADDRESS _____
(Street) (City) (State) (Zip Code)

If an address outside the United States is given, please indicate whether you are a United States citizen

Yes ☐ No ☐

If you wish to have net long-term capital gains for your account paid over to you rather than reinvested in additional units as described in the Prospectus, please initial here _____
(initials)

(This authorization is subject to acceptance by First National City Bank at its Headquarters at 399 Park Avenue, New York, New York.)

CUSTOMER'S COPY

AUTHORIZATION FOR COMMINGLING OF AGENCY ACCOUNTS

To: FIRST NATIONAL CITY BANK
P. O. Box 3130, Grand Central Station
New York, N. Y. 10017

In order to obtain your investment management services, I hereby constitute you my attorney and managing agent with discretion as to the investment of any funds at any time held in my investment advisory account with you. You may invest such funds, together with the funds of other customers who have given you the same authority, through a single collective account (the "Commingled Account") consisting of cash and securities in your custody and described in the current Prospectus for the Commingled Account, a copy of which I have received and by the provisions of which I agree to be bound. Except as otherwise required by the Investment Company Act of 1940 or any rule or regulation of the Securities and Exchange Commission thereunder or by any regulation or ruling of the Comptroller of the Currency of the United States, you may as my attorney and agent make any changes in the management or operation of the Commingled Account.

Your authority to act under this letter shall continue until revoked in writing by me or until my death or adjudicated incompetency. It is understood that you shall not, however, be liable for continuing to act after my death or incompetency if you shall not have received notice thereof. If your authority to act under this letter shall be terminated while my account is invested through the Commingled Account, my participation in the Commingled Account shall be terminated and liquidated in the manner described in the Prospectus of the Commingled Account current at the time of such termination.

_____ (Date)

_____ (Signature)

Please Print:

NAME _____ (First) _____ (Middle) _____ (Last)

Social Security Number or Taxpayer Identification Number

ADDRESS _____ (Street) (City) (State) (Zip Code)

If an address outside the United States is given, please indicate whether you are a United States citizen:

Yes ☐ No ☐

If you wish to have net long-term capital gains for your account paid over to you rather than reinvested in additional units as described in the Prospectus, please initial here _____ (Initials).

(This authorization is subject to acceptance by First National City Bank at its Headquarters at 399 Park Avenue, New York, New York.)

PROSPECTUS / JUNE 14, 1966

COMMINGLED INVESTMENT ACCOUNT of FIRST NATIONAL CITY BANK

399 Park Avenue, New York, New York

No person has been authorized to give any information or to make any representations other than those contained in this Prospectus in connection with the offer contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized. This Prospectus does not constitute an offer of, or a solicitation of an offer to acquire, units of participation in the Commingled Investment Account in any State to anyone to whom it is unlawful to make such an offer or solicitation in such State.

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INVESTMENT ADVISER AND MANAGER

FIRST NATIONAL CITY BANK
399 Park Avenue, New York, N. Y.

LEGAL COUNSEL

DEBEVOISE, PLIMPTON, LYONS & GATES
320 Park Avenue, New York, N. Y.

AUDITORS

HASKINS & SELLS
2 Broadway, New York, N. Y.

FIA 4401 6-66

[Exhibit 13 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

COMMINGLED INVESTMENT ACCOUNT
of
FIRST NATIONAL CITY BANK

NOTICE OF ANNUAL MEETING OF PARTICIPANTS

The Annual Meeting of the participants of the Commingled Investment Account of First National City Bank will be held at the offices of First National City Bank at 399 Park Avenue, New York, New York, on Wednesday, November 16, 1966, at 11 A.M., New York time, for the following purposes:

(a) To elect members of the Committee for the Commingled Account to hold office until the next Annual Meeting and until their respective successors shall have been elected and qualified.

(b) To consider and, if deemed advisable, ratify the action taken by the Committee in selecting Haskins & Sells as accountants for the fiscal year ended August 31, 1966 and the fiscal year ending August 31, 1967.

(c) To consider and, if deemed advisable, approve the Management Agreement of the Commingled Account with First National City Bank, dated May 25, 1966.

(d) To transact such other business as may properly come before the meeting or any adjournment or adjournments thereof.

Holders of record of units of participation in the Commingled Account as of the close of business on November 15, 1966 are entitled to vote at the meeting or any adjournment thereof.

By order of the Committee,

ROBERT L. HOGUET, JR.
Chairman

October 14, 1966

PLEASE FILL IN, SIGN, DATE AND RETURN THE ENCLOSED FORM OF PROXY PROMPTLY.

You may nevertheless vote in person if you do attend the meeting.

PROXY STATEMENT

GENERAL

This statement is furnished in connection with the solicitation of proxies by the Committee for the Commingled Investment Account of First National City Bank (the "Commingled Account") for use at the Annual Meeting of its participants, to be held at the offices of First National City Bank, 399 Park Avenue, New York, New York, on Wednesday, November 16, 1966, at 11:00 A.M., New York time.

Any person giving a proxy has power to revoke it at any time prior to its exercise. All properly executed and unrevoked proxies received in time for the meeting will be voted.

The record of participants entitled to vote at the meeting, or any adjournment thereof, will be determined as of the close of business on November 15, 1966. Each participant is entitled to such number of votes, in person or by proxy, as is equal to the number of units of participation (including fractions of units) held by such participant. On October 10, 1966, there were 304,798.518 units of participation outstanding.

ELECTION OF MEMBERS OF THE COMMITTEE

It is the intention of the persons named in the accompanying form of proxy to vote at the Annual Meeting for the election of the nominees named below as members of the Committee for the Commingled Account to serve until the next annual meeting of participants and until their successors are elected and qualified. (A participant may specify that his proxy not be voted in connection with the election of the Committee members by checking the box provided for this purpose on the form of proxy.) If any such nominee shall be unable to serve, an event not now anticipated, the proxies will be voted for such person, if any, as shall be designated by the Committee to replace any such nominee.

Information Concerning Nominees

The following table sets forth the principal occupation of each of the nominees for members of the Committee:

Nominee	*Principal Occupation*
CONRAD F. AHRENS	Vice President of First National City Bank in charge of the Investment Research Department of the Bank's Trust and Investment Division and a member of its Investment Policy Committee
ROBERT L. HOGUET, JR.	Executive Vice President of First National City Bank in charge of the Bank's Trust and Investment Division and Chairman of its Investment Policy Committee

Nominee	Principal Occupation
JOHN D. LOCKTON	Treasurer of the General Electric Company, Chairman of the Trustees of the General Electric Pension Trust and other General Electric trusts, and a Trustee of the Elfun Trusts, a mutual fund for General Electric employees
PAUL SAUREL	Partner of the law firm of Morris & McVeigh
HULBERT W. TUPP	Senior Vice President of First National City Bank in the Bank's Trust and Investment Division and a member of its Investment Policy Committee since January 1965. Member of the Bank's Trust Board since 1963. Financial Vice President of the University of Rochester prior to January 1965, and since that date, Chairman of its Investment Committee.

NOTE: All positions shown have been held for more than five years unless otherwise indicated, except that Messrs. Ahrens and Hoguet have been associated with First National City Bank in responsible positions for more than five years, although not at all times in the positions shown.

Each of the nominees named above is now a member of the Committee for the Commingled Account, having been appointed to such position in September 1965 by First National City Bank upon the organization of the Commingled Account, except that Mr. Lockton was elected to the Committee by its members on April 20, 1966. Mr. Hoguet has acted as Chairman of the Committee since April 20, 1936. None of the members of the Committee beneficially owns any units of participation in the Commingled Account.

Remuneration of Members of the Committee

During the fiscal year ended August 31, 1966, the members of the Committee who were not affiliated with First National City Bank received in the aggregate fees of $5,000, for which the Commingled Account was reimbursed by the Bank pursuant to the provisions of the Management Agreement with the Commingled Account. (Further information about the Management Agreement is set forth below under "Approval of Management Agreement".) It is expected that during the fiscal year ending August 31, 1967, the unaffiliated Committee members will receive in the aggregate fees of $10,000. No compensation has been or will be paid out of the Commingled Account to any of the members of the Committee affiliated with the Bank.

Brokerage Commissions on Portfolio Transactions

In placing orders for the purchase and sale of portfolio securities for the Commingled Account, pursuant to the Management Agreement, the primary objective of First National City Bank is to obtain the most favorable prices and execution of orders available. While

there is no undertaking or agreement to do so, it is the Bank's practice to place a major portion of such brokerage business with brokers and dealers who supply supplemental research and statistical information or market quotations to the Bank as the Commingled Account's investment adviser. This practice is not followed if, as a result, the Commingled Account would not obtain the most favorable prices and execution. There is no intention to place portfolio transactions with any particular brokers or dealers or group thereof.

For the fiscal year ended August 31, 1966, the Commingled Account paid total brokerage commissions of $11,769 on portfolio transactions. All such brokerage was allocated to brokers and dealers primarily on the basis of providing research information to First National City Bank and to a small extent for market quotations. It is not possible to place a dollar value on such information. Moreover, the Bank does not believe that its expenses in furnishing investment management are significantly affected by the receipt of such research and statistical information and market quotations, which merely supplement the Bank's own research activities.

APPOINTMENT OF ACCOUNTANTS

The Committee has unanimously appointed Haskins & Sells, a firm of independent certified public accountants, to act as accountants for the Commingled Account's first fiscal year ended August 31, 1966 and for the fiscal year ending August 31, 1967, subject to the ratification of the participants at the forthcoming Annual Meeting. The enclosed form of proxy provides space for instructions, directing the proxies named therein to vote for or against ratification of that appointment.

APPROVAL OF MANAGEMENT AGREEMENT

The Commingled Account is managed by First National City Bank, 399 Park Avenue, New York, New York, pursuant to a Management Agreement dated May 25, 1966. The Management Agreement provides that the Bank will maintain a continuous investment program for the Commingled Account, not inconsistent with its stated investment policy, will determine what securities are to be purchased or sold for the Commingled Account and will execute transactions for the Commingled Account accordingly. It is further provided that the Bank will furnish all custodian, administrative and clerical services, office space and facilities required for the operation of the Commingled Account, will reimburse the Commingled Account for the compensation and expenses, if any, paid by the Commingled Account to any member of the Committee who is not affiliated with the Bank and will pay all costs and expenses arising in connection with the organization of the Commingled Account, as well as the cost of current reports to participants.

For all of its services under the Agreement, First National City Bank receives as of the last day of each fiscal quarter a fee of ⅛ of 1% (approximately ½ of 1% on an annual basis) of the average of the values of the Commingled Account's net assets taken on each valuation date during such quarter. For the period June 2, 1966 to August 31, 1966, this fee amounted to $1,674.42.

The Management Agreement was unanimously approved by the Committee for the Commingled Account, including the members thereof not affiliated with First National City Bank, at a meeting of the Committee held on April 20, 1966. At the time of such meeting, and at September 15, 1966, the only securities of First National City Bank beneficially owned by any of the Committee members consisted of shares of the Capital Stock of the Bank so owned by Messrs. Ahrens and Hoguet which represented in the aggregate less than 2/1,000th of 1% of the shares outstanding.

The Committee has deemed it advisable to submit the Management Agreement to the participants at this time as the Agreement provides that it shall automatically terminate if it is not approved by participants having more than 50% of the units of participation at the first Annual Meeting of the participants.

If approved by the participants at the forthcoming Annual Meeting, the Management Agreement remains in effect until December 31, 1967, and will continue from year to year thereafter, provided that such continuance is approved at least annually either by the Committee (including a majority of the members of the Committee who are not affiliated with the Bank) or by the vote of participants having more than 50% of the units of participation. The Agreement may, on 60 days' notice, be terminated by the Committee, by the vote of a majority of the units of participation as set forth in the Agreement, or by the Bank and terminates automatically if assigned by the Bank. Amendments of the Management Agreement must be approved by the Comptroller of the Currency and by the vote of participants having more than 50% of the units of participation.

First National City Bank, as well as acting as investment adviser and manager for the Commingled Account, may also be deemed its statutory underwriter. The name, address and principal occupation of each director of First National City Bank (including its three principal executive officers) are as follows:

Name and Address	*Principal Occupation*
William M. Batten 235 Trumbull Road Manhasset, New York	Chairman, J. C. Penney Company, Inc.
John E. Sherwith Briarwood Crossing Cedarhurst, New York	Chairman of the Board, National Distillers and Chemical Corporation

Name and Address	*Principal Occupation*
CHARLES M. BRINCKERHOFF 784 Park Avenue New York, New York	Chairman of the Board, The Anaconda Company
PERCY CHUBB, 2ND Chester, New Jersey	Chairman, Chubb & Son Inc.
FREDRICK M. EATON 791 Park Avenue New York, New York	Member, Shearman & Sterling
R. GWIN FOLLIS 3690 Washington Street San Francisco, California	Chairman of the Board, Standard Oil Company of California
J. PETER GRACE 41 Shelter Rock Road Manhasset, New York	President, W. R. Grace & Co.
JOSEPH A. GRAZIER 435 East 52nd Street New York, New York	Chairman, American Radiator & Standard Sanitary Corporation
MICHAEL L. HAIDER 3 East 84th Street New York, New York	Chairman, Standard Oil Company (New Jersey)
H. MANSFIELD HORNER 105 Bloomfield Avenue Hartford, Connecticut	Chairman, United Aircraft Corporation
AMORY HOUGHTON The Knoll Corning, New York	Honorary Chairman of the Board, Corning Glass Works
GEORGE P. JENKINS 485 Ridgewood Avenue Glen Ridge, New Jersey	Chairman of the Finance Committee, Metropolitan Life Insurance Company
JOHN R. KIMBERLY Kimberly Point Neenah, Wisconsin	President, Kimberly-Clark Corporation
ROGER MILLIKEN 627 Otis Boulevard Spartanburg, South Carolina	President, Deering Milliken, Inc.
GEORGE S. MOORE 579 Frogtown Road New Canaan, Connecticut	President, First National City Bank
CHARLES G. MORTIMER 17 Platt Place White Plains, New York	Chairman of the Executive Committee, General Foods Corporation
ROBERT S. OELMAN 235 Park Road Dayton, Ohio	Chairman, The National Cash Register Company

Name and Address	*Principal Occupation*
RICHARD S. PERKINS 141 East 72nd Street New York, New York	Chairman of the Executive Committee, First National City Bank
CLIFTON W. PHALEN 110 East 37th Street New York, New York	Chairman, New York Telephone Company
JAMES S. ROCKEFELLER Indian Spring Road Greenwich, Connecticut	Chairman, First National City Bank
CHAS. H. SOMMER 942 Tirrill Farms Road St. Louis, Missouri	President, Monsanto Company
WILLIAM C. STOLK 14 Sutton Place South New York, New York	Director, American Can Company
LEO D. WELCH Brookville Road Brookville, New York	Former Chairman of Standard Oil Company (New Jersey) and of Communications Satellite Corporation
ALBERT L. WILLIAMS 16 Essex Place Bronxville, New York	Chairman of the Executive Committee, International Business Machines Corporation
JOSEPH C. WILSON 1550 Clover Street Rochester, New York	Chairman and Chief Executive Officer, Xerox Corporation

First National City Bank furnishes investment advice with respect to the assets of two other registered investment companies, The Equity Annuity Life Insurance Company and the National Variable Annuity Company of Florida Separate Account. On August 15, 1966, the market values of the portfolio securities of these companies were, respectively, $7,918,462 and $40,216. First National City Bank's services for both companies are limited to making investment recommendations to management for their approval and the safekeeping of portfolio securities. The Bank's fee for these services is based on the market value of the portfolio of each company, and at present values is computed at the rate of ⅛ of 1% per annum of such value in the case of The Equity Annuity Life Insurance Company and ½ of 1% per annum of such value in the case of the National Variable Annuity Company of Florida Separate Account.

In addition, First National City Bank manages the investments of Netherlands Antilles Mutual Fund N.V., an investment company organized under the laws of the Netherlands Antilles. As of September 7, 1966, such Fund had net assets of $27,918,983. The Bank receives compensation quarterly at the rate of ⅛ of 1% (½ of 1% on an annual basis) of the average net asset value of such Fund.

OTHER MATTERS

The Committee knows of no business to be brought before the meeting other than as set forth above. If, however, any other matters properly come before the meeting, it is the intention of the persons named in the enclosed form of proxy to vote such proxies on such matters in accordance with their best judgment. The cost of preparation and distribution of this notice of meeting and proxy statement and the proxies will be borne by the Commingled Account. Any additional expense in connection with the solicitation of proxies will be borne by First National City Bank.

The Annual Report of the Commingled Account for the fiscal year ended August 31, 1966, including financial statements, is enclosed herewith.

Participants who cannot attend the meeting in person are urged to sign the enclosed form of proxy and return it at once in the envelope enclosed for that purpose.

By Order of the Committee,

ROBERT L. HOGUET, JR.
Chairman

October 14, 1966

PROXY

COMMINGLED INVESTMENT ACCOUNT OF FIRST NATIONAL CITY BA

Annual Meeting of Participants, November 16, 1966

The undersigned hereby appoints ROBERT L. HOGUET, JR., JOHN D. LOCKTON and HULBERT W. TAPPE, and each of them, the proxies of the undersigned, with power of substitution to each of them, to vote all units of participation in the COMMINGLED INVESTMENT ACCOUNT OF FIRST NATIONAL CITY BANK which the undersigned is entitled to vote, at the Annual Meeting of the Participants of the Commingled Account, to be held at the offices of First National City Bank, 399 Park Avenue, New York, New York, on November 16, 1966, at 11 A.M., New York time, and at any adjournment or adjournments thereof:

(1) FOR ☐ the election of members of the Committee for the Commingled Account; [If the foregoing box is left blank and this box ☐ is checked, this proxy will not be voted in connection with such election.]

(2) FOR ☐ AGAINST ☐ ratification of the selection of Haskins & Sells as accountants for the fiscal year ended August 31, 1966 and the fiscal year ending August 31, 1967;

(3) FOR ☐ AGAINST ☐ approval of the Management Agreement of the Commingled Account with First National City Bank, dated May 23, 1966; and

(4) on any other business which may properly come before the meeting or any adjournment or adjournments thereof.

PLEASE SIGN AND DATE ON THE REVERSE SIDE AND MAIL PROMPTLY IN ENCLOSED ENVELOPE.

THIS PROXY IS SOLICITED BY THE MANAGEMENT and will be voted FOR the proposals in paragraphs (2) and (3) unless the participant specifies otherwise, in which case it will be voted as specified.

It will also be voted FOR the election of members of the Committee unless the participant specifies that it not be voted in connection with such election.

Dated: , 1966

RECEIVED

OCT 17 1966

U.S. SECURITIES & EXCHANGE COMMISSION

.....

Signature(s) of Participant(s)

(Please sign exactly as your name or names appear above. When signing as executor, administrator, trustee or custodian for a minor, please give your full title as such. Joint holders should both sign.)

[Exhibit 14 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of First National City Bank]

COMMINGLED INVESTMENT ACCOUNT

As a valued customer of the Bank you might wish to know of a recent addition to the services of our Trust and Investment Division. The newly established Commingled Investment Account extends our Investment Advisory service to individuals who wish to invest $10,000 or more. The Commingled Account is also available to joint tenants, custodians for minors, trustees and corporations.

As stated in the enclosed Prospectus, participations are acquired and withdrawn at net asset value without any charge for admission or withdrawal. The Bank receives an annual management fee of approximately ½ of 1% of the net assets of the Commingled Account.

The policy of the Commingled Account is to invest principally in common stocks and convertible securities which, in the Bank's judgment, offer an opportunity for long-term growth of principal and of income. Purchases and sales of securities will be made on the basis of long-term investment considerations and not for short-term profit.

In view of its investment aims, the Commingled Account is designed for investors who have sufficient cash reserves, life insurance or other resources to meet emergencies, and who do not require high current income or stability of principal and of income.

You should give careful consideration to these factors in deciding whether the Commingled Account provides a suitable investment medium for you. If you have any questions we shall be pleased to have you call the officer who handles your account, or our Investment Advisory Department (559-0491).

An individual may become a participant by completing the tear-out authorization form on page 13 of the Prospectus and forwarding it with his check to First National City Bank, P. O. Box 3130, Grand Central Station, New York, New York 10017. Special forms are available from the Bank for joint accounts, custodians for minors, trustees and corporations.

[Exhibit 15 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

[Letterhead of Board of Governors of the Federal Reserve System]

November 21, 1962

Mr. Charles H. Schimpff, Chairman
Investment Company Institute,
900 Wilshire Boulevard,
Los Angeles 17, California

Dear Mr. Schimpff:

This is in response to your letter of September 10, 1962, asking that the Board review certain of its interpretations of section 32 of the Banking Act of 1933, which express the view that an individual is prohibited by that section of the law from serving at the same time as an officer, director or employee of a member bank and of an open-end investment company. Your letter refers specifically to the interpretations of the Board published in 1941 Federal Reserve Bulletin 399, and 1951 Federal Reserve Bulletin 645.

The position taken by the Board in these interpretations has been reviewed by the Board on a number of occasions in the past at the request of interested persons. One such review was made in 1954-55 at the request of your predecessor organization. However, in the light of your letter the matter has again been considered by the Board.

Section 32, as you know, prohibits interlocking relationships between any member bank and any organization "primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities". A mutual fund is, of course, engaged more or less continuously in the redemption of the stock issued by it and, consequently, it could not well carry on its activities

if it did not issue its own stock on a virtually continuous basis. The fact that such a company issues only its own shares and is not engaged in other activities of the kind described by the statute is not, of course, a relevant consideration; nor is it relevant that the stock is sold to the public through independent organizations with the result that the company derives no direct profit from such sales.

Your letter compares public utilities with mutual funds in that the former may frequently be obliged to issue their own securities in order to expand their operations. The Board believes, however, that public utility companies cannot fairly be compared in this respect with mutual funds since, in the normal case, a public utility is primarily engaged in producing and selling the utility involved and the issuance of its own stock does not constitute one of its primary functions.

For the reasons indicated, the Board continues to be of the opinion that the ordinary open-end investment company must be regarded as an organization of the kind described in section 32 of the Banking Act of 1933.

Very truly yours,

/s/ Merritt Sherman

Merritt Sherman,
Secretary

[Exhibit 16 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

Commingled Investment Account of First National City Bank

PURPOSE

To make First National City Bank's investment advisory services available to investors with $10,000 or more.

INVESTMENT POLICY

To invest principally in common stocks and convertible securities offering opportunity for long-term growth of capital and of income.

INVESTMENT PHILOSOPHY

To emphasize the careful selection of securities based on intensive research and analysis of the many factors which determine investment values, with primary emphasis on the following:

- the quality and character of management
- effective research and development capability
- low labor costs
- leadership within an industry
- strong underlying growth trend
- sales and service oriented companies

To reappraise constantly the securities held in the portfolio to be sure they continue to meet the selection criteria.

Committee for the Commingled Investment Account

CONRAD F. AHRENS	Vice President of First National City Bank in charge of the Investment Research Department of the Bank's Trust and Investment Division and a member of the Investment Policy Committee
ROBERT L. HOGUET, JR. (Chairman)	Executive Vice President of First National City Bank in charge of the Bank's Trust and Investment Division and Chairman of its Investment Policy Committee
JOHN D. LOCKTON	Treasurer of the General Electric Company, Chairman of the Trustees of the General Electric Pension Trust and other General Electric trusts, and a Trustee of the Elfun Trusts, a mutual fund for General Electric employees
PAUL SAUREL	Partner of the law firm of Morris & McVeigh
HULBERT W. TRIPP	Senior Vice President of First National City Bank in the Bank's Trust and Investment Division and a member of its Trust Board and Investment Policy Committee; and Chairman of the Investment Committee of University of Rochester

To The Participants:

We are pleased to welcome you as participants in the Commingled Investment Account of First National City Bank.

This First Report covers the period from inception on June 2, 1966 to the fiscal year end August 31, 1966.

The stated policy of the Commingled Account is to invest in securities offering the opportunity for long-term growth of both capital and income. At fiscal year end 91.3% of net assets was invested in the securities of 26 different companies selected for this purpose and 8.5% was invested temporarily in U.S. Treasury bills as a reserve for future purchases. Eleven major industries were represented in the portfolio of securities, with investments in the Airline, Drug and Cosmetic, Office Equipment and Petroleum fields making up 50% of the total.

A policy of investing for long-term growth of necessity entails some degree of short-term risk. During the brief period covered by this report both stock and bond prices were under strong downward pressure. Demand for borrowed money was exceptionally strong both by business and government and, in addition, the Federal Reserve adopted a monetary policy which became increasingly restrictive as the year progressed. This pressure was evident in the Commingled Account's investment performance in the first few months, with net assets equal to $8.69 per unit of participation on August 31st. We remain confident that the carefully selected portfolio of securities has potential for growth on a longer term basis.

Robert L. Hoguet Jr.

ROBERT L. HOGUET, JR.
Chairman, Committee for the Commingled Investment Account

October 14, 1966

Commingled Investment Account of First National City Bank

Investments, August 31, 1966

Shares	COMMON STOCKS	Quoted Market Value	% of Net Assets
	AIRLINES		
1,400	Trans World Airlines, Inc.	$ 90,825.00	3.8
	CHEMICALS		
900	Eastman Kodak Co.	$ 107,212.50	4.5
2,000	Monsanto Co.	115,250.00	4.9
		$ 222,462.50	9.4
	DRUGS & COSMETICS		
1,200	Avon Products, Inc.	$ 96,000.00	4.1
700	Bristol-Myers Co.	65,800.00	2.8
1,100	Merck & Co., Inc.	75,900.00	3.2
		$ 237,700.00	10.1
	ELECTRICAL & ELECTRONICS		
1,400	International Telephone & Telegraph Corp.	$ 92,400.00	3.9
1,600	Zenith Radio Corporation	106,000.00	4.5
		$ 198,400.00	8.4
	FOOD & ALLIED CONSUMER PRODUCTS		
400	Coca-Cola Co.	$ 30,000.00	1.3
	FOREST PRODUCTS—PAPER		
4,000	Boise Cascade Corporation	$ 89,000.00	3.7
	OFFICE EQUIPMENT		
700	International Business Machines Corp.	$ 224,350.00	9.6
1,100	Xerox Corporation	195,250.00	8.1
		$ 419,600.00	17.7
	PETROLEUM		
2,000	Louisiana Land & Exploration Co.	$ 87,750.00	3.7
800	Pennzoil Co.	58,400.00	2.5
800	Standard Oil Company (New Jersey)	51,200.00	2.2
		$ 197,350.00	8.4
	PUBLIC UTILITY—ELECTRIC		
900	Carolina Power & Light Co.	$ 38,250.00	1.6
600	Texas Utilities Co.	28,800.00	1.2
		$ 67,050.00	2.8

Shares	COMMON STOCKS (continued)	Quoted Market Value	% of Net Assets
	PUBLIC UTILITIES—TELEPHONE		
2,300	General Telephone & Electronics Corp.	$ 89,700.00	3.8
3,500	United Utilities Inc.	73,062.50	3.1
		$ 162,762.50	6.9
	PUBLISHING		
600	Harcourt, Brace & World, Inc.	$ 47,400.00	2.0
500	Time Inc.	40,125.00	1.7
		87,525.00	3.7
	Total Common Stocks	$1,802,675.00	76.2
	CONVERTIBLE PREFERRED STOCKS		
	PETROLEUM		
900	Union Oil Co. of California $2.50	$ 60,187.50	2.5
	PUBLISHING		
1,300	McGraw-Hill, Inc. $1.20	$ 65,650.00	2.8
	Total Convertible Preferred Stocks	$ 125,837.50	5.3
Face Value	**CONVERTIBLE DEBENTURES**		
$ 50,000	Continental Telephone Corp. 5¼%, 8/1/86	$ 52,187.50	2.2
$ 90,000	Pan American World Airways, Inc. 4½%, 8/1/86	85,950.00	3.6
$ 61,000	United Air Lines, Inc. 4%, 3/1/90	94,855.00	4.0
	Total Convertible Debentures	$ 232,992.50	9.8
	UNITED STATES GOVERNMENT OBLIGATIONS		
$202,000	U.S. Treasury bills 9/30/66	$ 201,262.96	8.5
	TOTAL INVESTMENTS	$2,362,767.96	99.8
	Cash and other assets, less liabilities	5,312.68	.2
	NET ASSETS	$2,368,080.64	100.0

Statement of Assets and Liabilities, August 31, 1966

ASSETS:		
Cash		$ 297,894.96
Receivable for dividends and interest		7,150.24
Investments at market value (cost $2,668,880.07)		2,362,767.96
Total assets		2,667,813.16
LIABILITIES:		
Payable for securities purchased	$297,118.10	
Accrued liabilities	2,614.42	
Total liabilities		299,732.52
NET ASSETS applicable to 272,315.333 units of participation, equal to $8.69 per unit		$2,368,080.64

Statement of Changes in Net Assets

For the Period from June 2, 1966 (Commencement of Operations) to August 31, 1966

Net Assets, June 2, 1966	$ 220,000.00
Amounts received upon issue of 250,315.333 units	2,448,829.35
Net unrealized depreciation of investments	(306,112.11)
Net investment income	5,363.40
Net Assets, August 31, 1966 (including $5,363.40 undistributed net investment income)	$2,368,080.64

Statement of Income and Expense

For the Period from June 2, 1966 (Commencement of Operations) to August 31, 1966

INCOME:		
Dividends		$ 6,066.11
Interest		1,911.71
		7,977.82
EXPENSE:		
Management fee (Note 3)	$ 1,674.42	
Auditing fee	800.00	
State and local taxes (Note 2)	140.00	2,614.42
Net Investment Income		$ 5,363.40

See accompanying Notes to Financial Statements.

(1) Rulings of the Comptroller of the Currency and of the Securities and Exchange Commission favorable to the Commingled Account are being challenged in the United States courts for the District of Columbia by the Investment Company Institute and the National Association of Securities Dealers, Inc., respectively. A decision adverse to either agency might affect the status of the Commingled Account and require its termination and the distribution of its net assets to participants.

(2) No provision for Federal income tax has been made in the accompanying financial statements because the Commingled Account expects to qualify as a regulated investment company within the meaning of the Internal Revenue Code, distributing to participants substantially all investment income and gains realized on sales of investments.

(3) The management fee is paid to First National City Bank as compensation for managing the investments of the Commingled Account and furnishing all custodian, administrative and clerical services, office space and facilities required for the operation of the Commingled Account. Three members of the Committee supervising the Commingled Account are officers of the Bank.

The accompanying financial statements do not include $5,000 of fees paid to the two members of the Committee who are not affiliated with the Bank, which fees were reimbursed by the Bank. Also the Bank absorbed all organization expenses of the Commingled Account.

(4) Purchases of investment securities other than U.S. Treasury bills aggregated $2,467,617.11. There were no sales of such securities.

Opinion of Independent Certified Public Accountants

To the Committee and Participants of
the Commingled Investment Account of
First National City Bank:

We have examined the statement of assets and liabilities and the schedule of investments of the Commingled Investment Account of First National City Bank as of August 31, 1966, and the related statements of income and expenses and changes in net assets for the period from June 2, 1966 (commencement of operations) to August 31, 1966. We inspected the securities represented to us by the Bank as being held for the Commingled Investment Account as of August 31, 1966, obtained confirmations as to securities purchased but not yet received, and found the securities so inspected and confirmed to be in agreement with the accompanying schedule of investments. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying financial statements and schedule present fairly the financial position of the Commingled Investment Account of First National City Bank at August 31, 1966 and the results of its operations for the period from June 2, 1966 to August 31, 1966, in conformity with generally accepted accounting principles applied on a consistent basis.

New York, September 9, 1966

Haskins & Sells

[Exhibit 17 to Affidavit of James F. Fitzpatrick Civ. Act. No. 1083-66 United States District Court for the District of Columbia]

To The Participants:

We are pleased to present this Semi-Annual Report of the Commingled Investment Account's progress for the six months ended February 28, 1967.

Net asset value per unit of participation on February 28, 1967 registered a new high of $10.80. This compares favorably with a unit value of $8.69 on our previous reporting date, August 31, 1966, and represents an increase of 24%.

We have invested your funds in ten major industries with emphasis in the office equipment, electrical and electronics, drug and cosmetic, and airline groups. The portion of net assets invested in U. S. Treasury Bills was 16.9% on February 28, 1967. These funds function primarily as a reserve for future security purchases and place the Account in a position to take advantage of buying opportunities.

To satisfy frequent requests from our participants that we compare the performance of the Commingled Investment Account with that of the Dow Jones Industrial Average, the tabulation below reflects the percentage change on February 28, 1967 from June 2, 1966 (commencement of operations) and from August 31, 1966 (end of first fiscal year). While the Dow Jones is a widely recognized index of average market performance, we should point out that the stocks held in the Commingled Investment Account were selected for long term growth of capital and income and are therefore not truly comparable with the thirty stocks comprising the Dow Jones Industrial Average.

	June 2, 1966	*August 31, 1966*	*February 28, 1967*	*% Change February 28, 1967 From June 2, 1966*	*% Change February 28, 1967 From August 31, 1966*
Net Assets Per Unit	$10.00	$8.69	$10.80	+8.0%	+24.3%
Dow Jones Industrial Average	882.73	788.41	839.37	−4.9	+ 6.5

Investing in common stocks and convertible securities for long-term growth of both capital and income is our stated investment policy. With this as our objective, we are continually alert to changing conditions and relative values. The rather sharp contraction in stock prices which began last summer continued into October, after which the general level of common stock prices improved despite the less robust economic climate. During this hectic period we effected a number of changes as opportunities arose. While good results over the near-term are gratifying, we want to re-emphasize that long-term goals determine our selections.

We invite your comments or questions.

Robert L. Hoguet, Jr.
Chairman, Committee for the Commingled Investment Account

April 12, 1967

Commingled Investment Account — First National City Bank

Investments, February 28, 1967

Shares	Common Stocks	Quoted Market Value	% of Net Assets
	AIRLINES		
2,100	Trans World Airlines, Inc.	$ 164,325.00	3.6
	CHEMICALS		
1,100	Eastman Kodak Co.	$ 159,087.50	3.5
	DRUGS, COSMETICS, ETC.		
1,600	Avon Products, Inc.	$ 137,200.00	3.0
3,000	Becton, Dickinson & Co.	153,000.00	3.3
2,000	Bristol-Myers Co.	122,250.00	2.7
500	Lilly (Eli) & Co.	43,625.00	.9
1,100	Merck & Co., Inc.	86,625.00	1.9
		$ 542,700.00	11.8
	ELECTRICAL & ELECTRONICS		
2,000	International Telephone & Telegraph Corp.	$ 172,500.00	3.8
1,000	Texas Instruments, Inc.	107,000.00	2.3
2,400	Zenith Radio Corporation	137,700.00	3.0
		$ 417,200.00	9.1
	FOOD & ALLIED PRODUCTS		
1,000	International Flavors & Fragrances, Inc.	$ 41,250.00	.9
	MACHINE TOOLS		
3,500	Kearney & Trecker Corp.	$ 142,187.50	3.1
	OFFICE EQUIPMENT		
800	International Business Machines Corp.	$ 344,000.00	7.5
1,300	Xerox Corporation	323,700.00	7.1
		$ 667,700.00	14.6
	PETROLEUM		
2,000	Louisiana Land & Exploration Co.	$ 117,250.00	2.6
2,000	Pennzoil Co.	180,250.00	3.9
		$ 297,500.00	6.5
	PUBLIC UTILITIES—TELEPHONE		
2,300	General Telephone & Electronics Corp.	$ 112,700.00	2.5
5,000	United Utilities Inc.	150,000.00	3.3
		$ 262,700.00	5.8

Shares	Common Stocks *(continued)*	Quoted Market Value	% of Net Assets
	PUBLISHING		
1,000	Harcourt, Brace & World, Inc.	$ 97,000.00	2.1
	Total Common Stocks	$2,791,650.00	61.0
	Convertible Preferred Stocks		
	ELECTRICAL & ELECTRONICS		
700	Teledyne Inc. $3.50	$ 89,775.00	2.0
1,500	Litton Industries, Inc. Non-cum. Pref. Ptc.	138,750.00	3.0
		$ 228,525.00	5.0
	PETROLEUM		
2,000	Union Oil Co. of California $2.50	$ 141,000.00	3.1
	PUBLISHING		
1,800	McGraw-Hill, Inc. $1.20	$ 138,375.00	3.0
	Total Convertible Preferred Stocks	$ 507,900.00	11.1
Face Value	**Convertible Debentures**		
$ 50,000	Boeing Company Sub. 5½%, 9/1/91	$ 66,750.00	1.5
$100,000	Continental Telephone Corp. 5¼%, 8/1/86	124,000.00	2.7
$100,000	Pan American World Airways, Inc. 4½%, 8/1/86	105,000.00	2.3
$ 85,000	United Air Lines, Inc. 4%, 3/1/90	191,675.00	4.2
	Total Convertible Debentures	$ 487,425.00	10.7
	United States Government Obligations		
$524,000	U.S. Treasury Bills 3/31/67	$ 518,277.65	11.3
$266,000	U.S. Treasury Bills 9/30/67	258,597.10	5.6
	Total United States Government Obligations	$ 776,874.75	16.9
	Total Investments	$4,563,849.75	99.7
	Cash and Other Assets, less Liabilities	15,794.11	.3
	NET ASSETS	$4,579,643.86	100.0%

Purchases and Sales of Investments (Excluding U.S. Treasury Bills) for the Six Months Ended February 28, 1967

Purchases

Face Value	CONVERTIBLE DEBENTURES
$50,000	Boeing Company Sub. 5½%, 9/1/91
$50,000	Continental Telephone Corp. 5¼%, 8/1/86
$10,000	Pan American World Airways, Inc. 4½%, 8/1/86
$24,000	United Air Lines, Inc. 4%, 3/1/90
Shares	**CONVERTIBLE PREFERRED STOCKS**
1,500	Litton Industries, Inc. Non-cum. Pref. Ptc.
500	McGraw-Hill, Inc. $1.20
700	Teledyne Inc. $3.50
1,100	Union Oil Co. of California $2.50
	COMMON STOCKS
400	Avon Products, Inc.
3,000*	Becton, Dickinson & Co.
1,300*	Bristol-Myers Co.
200	Eastman Kodak Co.
400	Harcourt,Brace & World, Inc.
100	International Business Machines Corp.
1,000	International Flavors & Fragrances, Inc.
600	International Telephone & Telegraph Corp.
3,500	Kearney & Trecker Corp.
500	Lilly (Eli) & Co.
1,200	Pennzoil Co.
1,000	Texas Instruments, Inc.
700	Trans World Airlines, Inc.
1,500	United Utilities Inc.
800	Xerox Corporation
800	Zenith Radio Corporation

Sales

Shares	COMMON STOCKS
4,000	Boise Cascade Corporation
900	Carolina Power & Light Co.
400	Coca Cola Co.
2,000	Monsanto Co.
800	Standard Oil Co. (New Jersey)
600	Texas Utilities Co.
500	Time Inc.
600	Xerox Corporation

** Includes shares received as result of stock split.*

Statement of Assets and Liabilities, February 28, 1967

ASSETS:

Cash		$ 88,665.62
Receivable for securities sold		33,601.42
Receivable for dividends and interest		13,852.26
Investments at market value:		
United States Government Obligations (cost $776,874.75)	$ 776,874.75	
Other (cost $3,327,929.17)	3,786,975.00	4,563,849.75
Total assets		4,699,969.05

LIABILITIES:

Payable for securities purchased	$ 111,426.75	
Accrued liabilities	8,898.44	
Total liabilities		120,325.19

NET ASSETS

applicable to 424,179.051 units of participation, equal to $10.80 per unit.... $4,579,643.86

Statement of Changes in Net Assets

For the Six Months Ended February 28, 1967

Net Assets, August 31, 1966 (including $5,363.40 undistributed net investment income)		$2,368,080.64
Income:		
Net investment income	$ 22,974.43	
Undistributed net investment income included in amounts received or paid upon issue and redemption of units...	5,553.86	
Dividends ($.05 a unit)	(16,340.99)	12,187.30
Units issued and redeemed:		
Amounts received upon issue of 159,806.168 units	$1,526,821.70	
Amounts paid upon redemption of 7,942.450 units	73,577.99	1,453,243.71
Realized loss on sale of investments (Note 3)		(19,025.73)
Increase in unrealized appreciation of investments		765,157.94
Net assets, February 28, 1967 (including $17,550.70 undistributed net investment income)		$4,579,643.86

See accompanying Notes to Financial Statements.

Statement of Income and Expense

For the Six Months Ended February 28, 1967

INCOME:		
Dividends		$23,490.00
Interest		13,611.78
		37,101.78
EXPENSE:		
Management fee (Note 5)	$8,089.15	
Legal and auditing fees	5,000.00	
Proxy statements and reports to Securities and Exchange Commission	698.20	
State and local taxes (Note 2)	340.00	14,127.35
Net Investment Income		$22,974.43

(1) Rulings of the Comptroller of the Currency and of the Securities and Exchange Commission favorable to the Commingled Account are under attack in the United States courts for the District of Columbia by the Investment Company Institute and the National Association of Securities Dealers, Inc., respectively. A decision adverse to either agency might affect the status of the Commingled Account and require its termination and the distribution of its net assets to participants.

(2) No provision for Federal income tax has been made in the accompanying financial statements because the Commingled Account has elected to be taxed as a regulated investment company within the meaning of the Internal Revenue Code, distributing to participants substantially all investment income as quarterly dividends and gains realized on sales of investments as an annual distribution.

(3) Gains and losses on sales of investments are based upon the cost of identified securities. If based on average cost the net loss would have been $48,490.66.

(4) Purchases and sales of investments, other than United States Government securities, amounted to $1,410,329.06 and $530,991.27 respectively, during the period.

(5) The management fee is paid to First National City Bank as compensation for managing the investments of the Commingled Account and furnishing all custodian, administrative and clerical services, office space and facilities required for the operaton of the Commingled Account. Three members of the Committee supervising the Commingled Account are officers of the Bank.

The accompanying financial statements do not include $5,000 of fees paid during the six months ended February 28, 1967 to the two members of the Committee who are not affiliated with the Bank, which fees were reimbursed by the Bank.

To the Committee for and Participants in the Commingled Investment Account of First National City Bank:

We have examined the statement of assets and liabilities and the schedule of investments of the Commingled Investment Account of First National City Bank as of February 28, 1967, the related statements of income and expenses and changes in net assets for the six months then ended, and the supplemental schedule of purchases and sales of investments. We inspected the securities represented to us by the Bank as being held for the Commingled Investment Account as of February 28, 1967, obtained confirmations as to securities purchased but not yet received, and found the securities so inspected and confirmed to be in agreement with the accompanying schedule of investments. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying financial statements and schedule of investments present fairly the financial position of the Commingled Investment Account of First National City Bank at February 28, 1967 and the results of its operations for the six months then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period, and the supplemental schedule of purchases and sales of investments, when considered in relation to the basic financial statements, presents fairly the information shown therein.

Haskins & Sells

New York, N. Y.
March 10, 1967

PURPOSE: To make First National City Bank's investment advisory services available to investors with $10,000 or more.

INVESTMENT POLICY: To invest principally in common stocks and convertible securities offering opportunity for long-term growth of capital and of income.

INVESTMENT PHILOSOPHY: To emphasize the careful selection of securities based on intensive research and analysis of the many factors which determine investment values, with primary emphasis on companies which meet as many of the following criteria as possible:

- high quality and character of management
- effective research and development capability
- low labor costs
- leadership within an industry
- strong underlying growth trend
- sales and service oriented companies

To reappraise constantly the securities held in the portfolio to be sure they continue to reflect the investment philosophy set forth above.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed April 4, 1967)

Defendant, William B. Camp, Comptroller of the Currency, by his undersigned attorneys, respectfully cross-moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and opposes plaintiffs' motion for summary judgment on the following grounds:

1. Plaintiffs lack standing to maintain this action.
2. There is no justiciable case or controversy between the plaintiffs and defendant.
3. Assuming, arguendo, that plaintiffs have standing, the Comptroller's regulations permitting, national banks to establish collective investment funds for agency accounts and the Comptroller's ruling in connection with the Bank's proposal are in accordance with law and not in excess of his statutory authority:
   a. Such regulations and ruling authorize fiduciary activities permitted by paragraph (a) of Section 1 of the Act of September 28, 1962, 76 Stat. 668, 12 U.S.C. 92a, and are within the scope of the Comptroller's regulatory powers under paragraph (j) of that action.
   b. Such regulations and ruling do not authorize any violation of Sections 16, 20, 21 or 32 of the Banking Act of 1933, 48 Stat 184, 188, 189, 194, as amended, 12 U.S.C. 24 (para. Seventh), 377, 378, 78 (the Banking Act of 1933, as amended).

In support of this cross-motion and opposition, the Court is respectfully referred to the defendant's affidavit and the

affidavit of Robert L. Hoguet, Jr., annexed hereto and to the memorandum of points and authorities filed herewith.

Respectfully submitted,

Barefoot Sanders
Assistant Attorney General

Harland F. Leathers

Irwin Goldbloom

Stephen N. Truitt

Attorneys, Department of Justice,
Washington, D.C. 28530

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

AFFIDAVIT

(Filed April 4, 1967)

District of Columbia, ss:

William B. Camp being duly sworn, deposes and says under oath that:

1. I am Comptroller of the Currency duly appointed by the President of the United States, and, as Comptroller of the Currency, I have responsibility for the administration of the National Bank Act, Title 12 U.S.C., Section 1, et seq., and for supervision and regulation of the approximately 4,800 national banks now operating pursuant thereto.

2. I make this affidavit on the basis of personal knowledge and the records of this Office.

3. On September 28, 1962, Congress, by the enactment of P.L. 87-722, 76 Stat. 668, transferred from the Board of Governors of the Federal Reserve System to the Comptrol-

ler of the Currency the responsibility and power to regulate the fiduciary activities of national banks.

4. In response to these increased responbilities, the Office of the Comptroller of the Currency (the "Office") immediately strengthened its trust division and created a new position entitled "Deputy Comptroller of the Currency for Trusts."

5. Shortly thereafter the Office requested that all national banks and all state banks operating collective investment funds submit to the Office recommendations as to how the existing fiduciary regulations might be improved. The voluminous response convinced the Office that some changes in the regulations were required. To this end, the Comptroller appointed a committee of prominent trust men and directed them to make a thorough study of the fiduciary regulations, with a view toward their revision.

6. As a result of these studies, the Comptroller decided that certain provisions of the existing regulations were in need of revision. Specific amendments, which affected all areas of national bank trust department activity, and which the Comptroller deemed consistent with the letter and spirit of the banking laws, were drafted.

7. Among other things, it was determined that the regulations governing collective investment of funds held by a bank in a fiduciary capacity were unduly and unnecessarily restrictive. The existing regulations authorized a national bank to collectively invest funds held in its capacity of trustee, executor, administrator, or guardian and funds which formed part of a tax exempt pension, profit sharing or stock bonus plan of an employer for the exclusive benefit of his employees. Under these regulations a national bank was not authorized to collectively invest funds held in the capacity of managing agent.

8. Under a discretionary managing agency agreement a customer turns funds or securities over to the bank and the bank undertakes to hold and manage a portfolio of investments for the customer pursuant to a power of attorney

which gives the bank complete investment discretion. For this service, which includes holding the securities, collecting and disbursing dividends or interest, making purchases and sales, and securities analysis, the bank charges a fee.

9. The Federal Reserve Board and the Comptroller of the Currency have consistently taken the position that a national bank cannot enter into such a managing agency agreement unless the bank has applied for and received fiduciary powers. This position is dictated by the fact that a bank holding a managing agency account has a fiduciary relationship with the beneficiary of the account, which relationship is in substance very similar to that of a trustee and beneficiary.

10. The Comptroller determined, after consultation with his counsel and counsel for the committee, that insofar as collective investment was concerned, there was no legal reason whatsoever for distinguishing between funds held by a bank as trustee, executor, administrator or guardian, and funds held under a managing agency agreement.

11. Records of this Office indicate that national banks have managed customers' money under managing agency agreements since at least 1930. However, due to the regulations which did not permit the collective investment of funds so held, each account had to be invested separately. The time and expense incurred in investing each account separately was such that banks could not profitably offer this service to any except those with substantial amounts of money to invest, often $100,000 or more. The management of smaller amounts resulted either in a fee that was unduly high relative to the amount invested, or in losses to the bank. Furthermore, smaller amounts were not able to achieve the diversification of assets which a sound investment program requires. Thus national banks were effectively foreclosed from making their investment facilities and expertise available to any but the wealthy.

12. On the other hand, national banks were operating such collective investment funds as were authorized by the

existing regulations had discovered that relatively smaller trusts or estates could be invested and administered at reduced cost. This, of course, resulted from the economies inherent in managing one large collective investment fund rather than numerous individual small ones.

13. The manner in which banks operate these investment funds is substantially as follows: In its capacity of trustee, executor, administrator or guardian, or as trustee or agent for a pension, profit sharing or stock bonus plan, the bank receives certain funds. If not inconsistent with the trust instrument (the term "trust" is used to include any of the above-listed fiduciary capacities) or State law, the trust funds are used to purchase participations in an existing pool of assets (collective investment fund) held for the benefit of similar trusts. The individual trust's interest in the pool is measured by units of participation. When a collective investment fund is formed, each of these units of participation is given an arbitrary dollar value, but thereafter the value of these units fluctuates as the value of the pooled assets fluctuate. Thus the number of units which a given amount of money will buy depends on the value of the assets in the fund in relation to the number of units of participation outstanding. After the units are valued and the individual participating trust acquires as many as its funds entitled it to, the units of participation, which are evidenced by book entries, become the rest of the individual participating trust.

14. In view of the foregoing the Comptroller, with the concurrence of the General Counsel of the Treasury Department, published in the Federal Register for February 5, 1963, a proposed revision of the fiduciary regulations (12 C.F.R., Section 9). In addition to the types of collective investment funds permitted under prior regulations, this proposed revision provided in Section 9.18(c)(3) that national banks were authorized to invest funds held in the capacity of managing agent in a collective investment fund. Also, Section 9.18 (c)(5) of the proposed revision provided that national banks holding funds in a fiduciary capacity could, with the

approval of the Comptroller, collectively invest such funds in manners other than those expressly provided by Regulation 9.

15. After publication the Office received various comments and criticisms from banks and others. The Investment Company Institute (ICI) submitted a statement which challenged the legality of so much of the proposed regulation as authorized national banks to collectively invest funds held in the capacity of managing agent. ICI argued that the revised regulations would permit activity prohibited by 12 U.S.C. Section 92a, and certain provisions of the Glass-Steagall Act, as amended, 12 U.S.C. Sections 24, 78, 277 and 278.

16. The Comptroller considered the arguments presented and determined, with advice of counsel, that they were without merit. The revised regualtions (with minor modifications) became effective on April 5, 1963.

17. Since the Securities and Exchange Commission took the view that a collective investment fund for managing agency accounts as expressly authorized by Section 9.18 (c) (3) of Regulation 9 would have to be registered under the Investment Company Act of 1940, and the interests therein registered under the Securities Act of 1933, there was no immediate attempt by any bank to establish such a fund. Then, early in 1965, the First National City Bank of New York, after consultation with the staff of the S.E.C., drafted a plan for the collective investment of managing agency accounts, which the Bank referred to as a Commingled Investment Account. The plan complied with each of the provisions of Section 9.18(b) of Regulation 9, generally relating to collective investment funds, except that a few modifications were effected to facilitate compliance with the Investment Company Act of 1940. Because this plan, which in the opinion of the Bank's counsel was permitted under New York law, differed from the specifically enumerated collective investment funds authorized by the Comptoller's revised Regulation, the Bank, pursuant to 12 C.F.R.

9.18(c)(5), sought and obtained the Comptroller's express written approval of the plan. A copy of the approval as set forth in the letter of May 10, 1965, is attached hereto as Exhibit "A". This plan was also approved by the Board of Governors of the Federal Reserve System as not involving a violation of Section 32 of the Banking Act of 1933, 12 U.S.C. 78. The Commingled Investment Account was registered under the Investment Company Act.

18. A national bank's operation of a fund for the collective investment of money held in the capacity of managing agent does not differ materially from the operation of a fund for the collective investment of money held in the capacity of trustee. In the latter case the fiduciary capacity in which the bank receives and holds the money is designated "trustee," in the former, it is designated "managing agent." In both cases the fiduciary relationship between the bank and the individual customer continues while the funds are collectively invested. Given this continuing fiduciary relationship, both types of collective fund are considered by this Office to be fully consistent with the letter and spirit of the national banking laws.

19. In the considered opinion of the Office of the Comptroller of the Currency, the collective investment of funds held by national banks in the capacity of managing agent will be beneficial to the banks and to the public by enabling banks to make available their investment and managerial expertise to a class of persons who have heretofore not been able to afford it.

/s/ William B. Camp
Comptroller of the Currency
of the United States

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption omitted in printing]

**AFFIDAVIT OF ROBERT L. HOGUET, JR.
IN SUPPORT OF DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

(Filed April 4, 1967)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT L. HOGUET, JR., being first duly sworn, deposes and says as follows:

1. I am an Executive Vice President of First National City Bank (the "Bank") and am in charge of the Bank's Trust and Investment Division. I am also Chairman of the Committee for the Bank's Commingled Investment Account (the "Commingled Account"). I submit this affidavit in support of defendant's cross-motion for summary judgment in this action.

2. The Bank is a national banking association having its principal place of business in the City, County and State of New York. Through its Trust and Investment Division, the Bank provides its customers with a full range of fiduciary services. A copy of the Bank's permit to exercise fiduciary powers, issued by the Federal Reserve Board to the Bank's predecessor on January 29, 1919, is attached hereto as Exhibit A. Pursuant to this permit the Bank has the right to act, when not in contravention of state or local law, as trustee, executor, etc., "or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with national banks, are permitted to act under the laws of the State of New York."

3. Whenever the Bank acts as trustee, its principal function is the investment management of the trust assets. The Bank, of course, performs other important duties, such as the safe-keeping of the trust assets and the disbursement of

income and principal in accordance with the terms of the governing instrument. But the trust business is primarily the business of providing continuous, professional management of investments. To render this service, the Bank's Trust and Investment Division maintains an Investment Research Department which is constantly studying and evaluating the investment potential of various industries and companies. The Trust and Investment Division also has available to it the views of the Bank's Economics Department as to current economic conditions and long-range trends. Each of these Departments is staffed with full-time, highly qualified personnel who have on hand information which no individual trustee or investor could hope to assemble. The trust officers responsible for the supervision of the Bank's trust accounts utilize the investment and economic analyses of these Departments in making investment decisions for such accounts.

4. As a natural adjunct to the management of trust funds, the Bank has also for many years provided investment advisory services to customers who do not wish to create a trust, but who do want the benefit of the Bank's professional investment management and custodial service. For such customers the Bank acts as agent rather than as trustee. Under one type of agency arrangement the Bank manages the investments in the account pursuant to a power of attorney giving the Bank full investment discretion. This type of account is known in the banking industry as a "managing agency account", and many state-chartered banks and trust companies in New York which are in competition with the Bank have offered this type of investment advisory service for years.

5. Individual investment management of either a trust or agency account entails certain administrative duties which must be performed separately for each account, regardless of size. These duties include holding and handling portfolio securities, making purchases and sales, collecting and disbursing dividends and exercising investment super-

vision—all on an individual basis. Larger accounts generate a fee which is sufficient to cover these administrative costs; but a fee charged at the same rate (i.e., percentage of asset value) to a smaller account is likely to be insufficient, and the fee cannot be increased without becoming excessive in relation to the amount under management. Thus, in the case of managing agency accounts, the Bank's administrative expense for individual supervision has in recent years dictated a minimum charge of $1,000 a year, and the Bank has not generally accepted such accounts unless the customer's investment funds amounted to at least $200,000. There has been, however, a constant demand for the Bank's investment management services from customers with more modest amounts to invest, and the Bank has searched for methods of reducing administrative costs in order to enable it to accept such accounts.

6. With respect to smaller trust accounts, the Bank has for many years been able to minimize administrative costs by commingling the assets of these trusts for investment purposes in a common trust fund. The economies of collective investment are such that the Bank can afford to accept trust accounts that it would otherwise have to refuse if forced to manage such accounts on an individual basis. The Bank operates a number of collective investment funds which have been established pursuant to Regulation 9 of the Comptroller of the Currency (12 CFR 9) or prior regulations of the Federal Reserve Board. Those funds which the Bank has established for the collective investment of assets which it holds in its capacity as personal or testamentary trustee, executor, administrator or guardian are also established and operated in conformity with Section 100-c of the New York Banking Law. Those funds which the Bank has established for the collective investment of assets held as trustee of employee-benefit pension or profit-sharing trusts are not established and operated pursuant to Section 100-c of the New York Banking Law. The Bank has been advised by counsel that, since the governing instrument of each trust participating in the collective

investment funds for employee-benefit trusts specifically authorizes the commingling of trust assets, such collective funds can be maintained as "contract" funds and that there is no need to look to Section 100-c for authority to commingle. On information and belief, state-chartered banks in New York also maintain similar collective funds for the investment of assets of employee-benefit trusts which are established and operated as "contract" funds and not pursuant to Section 100-c of the New York Banking Law.

7. In 1963 the Comptroller of the Currency revised Regulation 9 to permit the same technique of collective investment to be used with respect to managing agency accounts. This revision cleared the way for the Bank to develop its proposal for the Commingled Account. The Commingled Account is designed for those customers who wish to obtain the Bank's investment management services but who do not have sufficient capital to justify the expense of an individually supervised account. The Commingled Account is operated in accordance with a plan that has been filed with the Comptroller of the Currency and which also serves as a Securities Act prospectus. The Commingled Account works this way: The customer turns his funds ($10,000 or more) over to the Bank pursuant to a broad authorization making the Bank the customer's managing agent. There is thus created at the outset a true fiduciary relationship of principal and agent between each customer and the Bank. The authorization includes specific authority for the Bank to invest the customer's funds, together with the funds of other customers who have given the same authorization, through the Commingled Account. If the Bank is satisfied that the investment policy of the Commingled Account is suitable to the customer's needs, the Bank accepts the customer's account and, as his agent, adds his funds to the Commingled Account on one of the specified valuation dates.

8. Each customer who participates in the Commingled Account shares in proportion to the amount of his funds which are included. For convenience in determining the

proportionate interest of each particpating customer (or "participant"), the Commingled Account is divided into units of equal value. A participation is transferable only to another person who has validly appointed the Bank as managing agent, and, because of the underlying agency relationship the interest of a participant terminates upon his death or incompetency and his funds are withdrawn from the Commingled Account and held for his legal representatives.

9. There is no charge either for admission to or withdrawal from the Commingled Account. Each dollar received by the Bank for investment through the Commingled Account participates in full. No broker or dealer is engaged to underwrite or distribute participations, and no sales commission is paid to anyone in connection with the admission of a participant to the Commingled Account.

10. The operation of the Commingled Account is supervised by a Committee initially appointed by the Bank but thereafter elected annually by the participants. (The first election was held on November 16, 1966.) At least 40% of the members of the Committee must at all times be persons not affiliated with the Bank, but the majority of the members may be, and are expected to be, officers in the Bank's Trust and Investment Division. At the present time, three of the five Committee members are Bank officers.

11. The Bank manages the Commingled Account pursuant to a management agreement. The Bank maintains a continuous investment program consistent with the Commingled Account's stated investment policy, and the Bank also furnishes all custodial, administrative and clerical services required for the operation of the Commingled Account. For all of these services the Bank is entitled to withdraw from the Commingled Account a management fee equal, on an annual basis, to ½ of 1% of the average net asset value of the Commingled Account. In other words, a customer who invests $10,000 through the Commingled Account pays $50 for a year's management, which is equivalent to the

$1,000 which is charged for a year's management of a $200,000 individual account. Whether a customer invests through the Commingled Account or has an individually supervised account, the management fee is the only fee which the Bank receives; there is no underwriting or distributing profit involved in the operation of the Commingled Account.

12. The arrangement for the Commingled Account has been considered and passed upon by the three Federal bank supervisory agencies and the Securities and Exchange Commission. The Comptroller of the Currency has approved the Commingled Account as a permissible form of collective investment subject to the requirements of Section 9.18 of Regulation 9, 12 C.F.R. § 9.18 (Supp. 1966). See *Hearings on S. 2704 Before a Subcommittee of the Senate Committee on Banking and Currency*, 89th Cong., 2d Sess. 418 (1966) [hereinafter referred to as the "*Hearings*"]. The Board of Governors of the Federal Reserve System has ruled that service by Bank officers on the Committee for the Commingled Account will not violate Section 32 of the Banking Act of 1933, 48 Stat. 194, as amended, 49 Stat. 709 (1935), 12 U.S.C. § 78. See *Hearings* 580. The Federal Deposit Insurance Corporation has stated that it believes that it is "sound public policy to permit banks collectively to invest funds held in the capacity of managing agent for their customers." See *Hearings* 25. And the Securities and Exchange Commission has found that the Commingled Account can be operated in conformity with all of the purposes and policies of the Federal security laws. See *Hearings*, 138.

13. In my view, the Commingled Account has in its short existence proven itself as a valid extension of traditional bank fiduciary services. First National City Bank already exercises investment responsibility or gives investment advice in respect of accounts having aggregate assets of more than $8.5 billion. The Bank has had extensive experience in the operation of common trust funds. It is

an institution of proven financial stability and has a long history of investment experience. It is seeking to make this experience available for the first time to the smaller investor at a low relative cost and without the imposition of any sales commission or "load". The Bank officers who are consulted by customers in connection with participation in the Commingled Account have no sales commission to earn by "selling" a customer on the advantages of the Commingled Account. Such officers are instructed that only persons for whom the Commingled Account constitutes a suitable investment medium should be permitted to participate. The Bank's operation of the Commingled Account is subject to successive layers of regulation imposed by banking authorities, the common law applicable to fiduciaries and the laws administered by the Securities and Exchange Commission. If a service of this nature is in fact competitive with mutual funds, as plaintiffs claim, the competition is entirely lawful and can only redound to the benefit of the public in terms of lower sales commissions on mutual fund shares.

/s/ Robert L. Hoguet, Jr.

[Jurat omitted in printing]

EXHIBIT A

FEDERAL RESERVE BOARD

Washington, D.C.
January 29, 1919.

Pursuant to authority vested in the Federal Reserve Board by the Act of Congress approved December 23, 1913, known as the Federal Reserve Act, as amended by the Act of September 26, 1918, the National City Bank of New York, New York has been granted the right to act, when not in contravention of State or local law, as Trustee, Executor, Administrator, Registrar of stocks and bonds, Guardian of estates, Assignee, Receiver, Committee of estates of lunatics,

or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with national banks, are permitted to act under the laws of the State of New York. The exercise of such rights, shall be subject to regulations prescribed by the Federal Reserve Board.

FEDERAL RESERVE BOARD

By /s/ D. Rawlings
Governor

Attest:

/s/ J. A. Broderick
Secretary

[Exhibit continued]

May 10, 1965

Mr. Robert L. Hoguet, Jr.
Executive Vice President
First National City Bank
399 Park Avenue
New York, New York

Dear Mr. Hoguet:

This is in reply to your request of April 26 for our approval of an arrangement to be entered into by the bank whereby funds of agency accounts which confer investment discretion on the bank are to be invested and reinvested in a single commingled account.

More specifically, the principal features of the arrangement are as follows:

> The funds of certain agency accounts of at least $10,000 in amount will be commingled for investment purposes. Funds deposited with the bank for this purpose will be accompanied by a broad authorization to the bank, substantially equivalent to the

power of attorney under which customers currently deposit their funds for individual attention.

The availability of the commingled account will not be given publicity by the bank except in connection with the promotion of its fiduciary services in general and the bank will not advertise or publicize the commingled account as such. Participations in the commingled account are to be made available only on the premises of the bank and its branches, or to persons who are already customers of the bank in other connections, or in response to unsolicited requests.

The Plan of the commingled account and the letter of authorization signed by the customer will be delivered to each customer of the bank who empowers the bank to invest his funds in the commingled account.

The commingled account will operate as follows. The supervision of the commingled account will be in the hands of a committee, the members of which will initially be appointed by the bank but thereafter elected by the participants at annual meetings. It is expected that officers of the bank will be members of the committee, except that at all times there will be at least one member who is independent of the bank. Pursuant to a management agreement with the committee, the bank will be responsibile for the management of the investments in the commingled account, will have custody of the assets in the commingled account, will handle all transactions in the portfolio of the commingled account, and will maintain the records and keep the books of the commingled account.

The management agreement shall be subject to the approval of the particpants at their first annual meeting. The management agreement will remain in force for two years from the date of its execution and is renewable annually thereafter, provided that such continuance is approved annually by the committee, including a majority of the members of the committee who are not directors, officers, or

employees of the bank, or by vote of participants having a majority of units of participation. No compensation is to be paid out of the commingled account to any of the members of the committee who are affiliated with the bank. Compensation and expenses, if any, may be paid to the members of the committee who are not affiliated with the bank, but the commingled acount will be reimbursed by the bank. The agreement provides that the bank will maintain a continuous investment program for the commingled account not inconsistent with its stated investment policy. The bank will determine what securities are to be purchased or sold for the commingled account and will execute transactions for the commingled account accordingly. The agreement further provides that the bank will furnish all custodian, administrative and clerical services, office space, and facilities required for the operation of the commingled account.

The interest of each customer participating in the commingled account is to be reflected in one or more units of participation and all such units shall have equal value. As evidence of the number of units of participation credited to a customer, a receipt will be given for his funds so deposited. Except for periods during which the calculation of net asset value may be suspended as permitted by the rules and regulations of the Securities and Exchange Commission and as detailed in the Plan, a customer will at any time be able to terminate his participation and cause a calculation of net asset value to be made for purposes of determining the value of the units of participation which are to be terminated and the amount to be withdrawn from the commingled account. In order to protect the rights of participants in the event of a suspension of the payment of terminating distributions, it is provided that if at the time of any such suspension a participant shall have given a notice of termination but shall not yet have received a distribution, such participant shall have the right to withdraw the notice of termination. Termination will occur auto-

matically upon the death of or adjudicated incompetency of the participant. Receipts for units of participation will not as such be transferable by a customer but a participant will be able to transfer his interest in the commingled account only to persons who have the legal capacity to appoint the bank as agent and who sign the broad authorization to the bank to have such funds so invested.

The commingled account will be audited at least semiannually by independent public accountants selected by the committee and approved by the participants. The financial reports based upon such audits, containing financial statements and other information as required by applicable laws and regulations, shall be filed with the appropriate regulatory authorities and shall be addressed to the committee and to the participants.

For the bank's services, the commingled account will be charged as of the last day of each fiscal quarter a fee payable to the bank based on a percentage of the average of the values of the net assets of the commingled account taken on each valuation date during such quarter for the purposes of determining the asset value of units of participation in the commingled account. The quarterly fee which the bank will receive from the commingled account pursuant to the management agreement will be the only fee charged by the bank in connection with the operation of the commingled account and shall not exceed the fee charged for investment advisory service for individual accounts of less than $500,000 if assets of the participant had not been invested in participations in the fund. Further, the bank will absorb all costs arising in connection with the organization of the commingled account, which shall include, among other things, costs and expenses attributable to the initial registration and qualification of the commingled account under the federal securities laws; the initial determination of its tax status and any rulings obtained for this purpose; its qualification under the laws of any State; and its approval by the Comptroller of the Currency. The expenses

that are charged to the commingled account are brokers' commissions; cost of independent professional services such as legal, auditing or accounting services (other than in connection with the organization of the commingled account), taxes or governmental fees attributable to transactions for the commingled account, or to income from the commingled account assets; costs of maintaining the registration and qualification of the commingled account under the federal securities laws or other applicable regulatory requirements (other than the cost of printing, publication and distribution of current reports to participants, which will be borne by the bank); and the cost of preparation and distribution of reports to participants and proxy statements.

The preceding arrangement is a form of collective investment subject to the requirements of Section 9.18 of Regulation 9. As contemplated, the commingled account does not comply with certain provisions of Section 9.18(b) of the Regulation. However, it appears to us that the arrangment would be a desirable one for the bank and the participating accounts and would embody all of the protections deemed necessary by this Office. Accordingly, pursuant to the provisions of Section 9.18(c)(5) of Regulation 9, the arrangement, and any minor changes within the Plan, letter of authorization and receipt which may be made and which do not detract from the substance of the proposal, is hereby approved so long as the rules and regulations of the Comptroller of the Currency applicable to collective investment, specifically the provisions of Section 9.18(b), except as provided for in the foregoing arrangement, are complied with during the life of the arrangement. In addition, the management contract has the approval of this Office; however, any changes which are made in the contract must be approved by the Comptroller.

Sincerely,

/s/ James J. Saxon
Comptroller of the
Currency

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INVESTMENT COMPANY INSTITUTE, et al.,
Plaintiffs

v.

WILLIAM B. CAMP, Comptroller of the Currency,
Defendant

Civil Action
No. 1083-66

OPINION

G. Duane Vieth, Esq., James F. Fitzpatrick, Esq., Charles R. Halpern, Esq., Arnold & Porter, Esqs., and Robert L. Augenblick, Esq. for plaintiffs.

Barefoot Sanders, Assistant Attorney General, Harland F. Leathers, Esq., Irwin Goldbloom, Esq., and Stephen M. Truitt, Esq., Department of Justice, David G. Bress, United States Attorney, and Joseph M. Hannon, Esq., Assistant United States Attorney, for defendant.

This action is brought against the Comptroller of the Currency by the Investment Company Institute in its representative capacity of the open-end investment companies, investment advisers and principal underwriters which comprise its membership. The Investment Company Institute (hereinafter called the Institute) is an unincorporated association, having its principal place of business in the city, county and state of New York. The Institute is a national association, having as its members 177 open-end management investment companies and their 88 investment advisers and 78 principal underwriters. The open-end management investment companies which are members of the Institute have assets of $36 billion, representing about 94 percent of the assets of all such companies in the United States, and have approximately 3.5 million shareholders. The other plaintiffs in this action are several individual members of the Institute. They seek an injunction to restrain the Comp-

troller from authorizing national banks to collectively invest funds tendered to the bank as managing agent solely for investment purposes. They also pray for a declaratory judgment adjudicating the pertinent regulation promulgated by the Comptroller to be invalid.

The action is now before this court on cross motions for summary judgment, all of the parties agreeing that no factual issues exist and that the legal issues are ripe for disposition by summary proceedings.

It is first necessary to review and to delineate the factual background upon which the issues in this action arose and within which these motions are made. In September of 1962 the statutory authority to regulate the fiduciary activities of national banks was transferred from the Board of Governors of the Federal Reserve System to the Comptroller of the Currency. Pub.L. 87–722, 76 Stat. 668, 12 U.S.C. § 92a. Pursuant to this authority, the Comptroller caused to be published in the Federal Register for February 5, 1963, a proposed revision of the fiduciary regulation, 12 C.F.R. § 9. In addition to the types of collective investment funds permitted under the prior regulation, this proposed revision provided that national banks were authorized to invest funds held in the capacity of managing agent in a collective investment account, 12 C.F.R. § 9.18(a)(3).[1] Moreover, the proposed revised regulation allowed the Comptroller to approve collective investment of such funds in manners other than those expressly provided by Regulation 9, 12 C.F.R. § 9.18(c)(5).[2]

The Comptroller invited national banks and other interested parties to submit comments pertaining to the proposed

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[1](3) In a common trust fund, maintained by the bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as managing agent under a managing agency agreement expressly providing that such monies are received by the bank in trust.

[2](5) In such other manner as shall be approved in writing by the Comptroller of the Currency.

regulation. Plaintiff Institute, on behalf of its members, participated to the full degree permitted and submitted a statement in opposition to the proposed regulation. It premised its argument on the same basis that it is presenting before this court, namely, that the revised regulation would allegedly permit activity prohibited by 12 U.S.C. § 92a, and certain provisions of the Glass-Steagall Act, as amended, 12 U.S.C. §§ 24, 78, 377 and 378. Notwithstanding this opposition the final regulation was adopted by the Comptroller on April 5, 1963, and revised by minor modifications on February 5, 1964, 12 C.F.R. § 918.

Pursuant to the regulation, on May 10, 1965, the Comptroller approved a plan submitted by First National City Bank of New York (hereinafter referred to as the Bank) for the establishment and operation of a collective investment fund, called the Commingled Investment Account, under Regulation 9, 12 C.F.R. § 9. The plan as outlined by the Bank differed from the specifically enumerated collective investment funds authorized by the Comptroller's revised Regulation, but the Bank, pursuant to 12 C.F.R. § 9.18(c)(5) sought and obtained the Comptroller's written approval of the plan.

On April 20, 1966, the Bank registered its Commingled Investment Account with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a–1 et seq. as an open-end management investment company. On the same date, the Bank filed a registration statement with the Securities and Exchange Commission pursuant to the Securities Act of 1933, 15 U.S.C. § 77a et seq., for the purpose of registering the participating interests or units to be issued by its Commingled Investment Account. The registration statement concerning those participating interests or units became effective on June 14, 1966. From that date the Bank has offered and sold to the public participating interests or units issued by the Commingled Investment Account by means of the prospectus for the First National City's Commingled Investment Account.

Before proceeding to the merits of this controversy, it is best at this time to specifically describe the operation of a mutual fund and the operation of the Commingled Investment Account (hereinafter referred to as the Account) so that a better understanding of the problem can be achieved.

Generally, "mutual funds" are open-end management companies engaged in the business of continuously issuing and offering for sale redeemable securities which represent an undivided interest in the fund's assets. Most mutual funds are corporate in form and the securities issued by them usually consist of capital stock. However, there are a number of mutual funds in a variety of noncorporate forms and the securities issued by some of them are variously denominated as beneficial interests, participating agreements, and the like. The proceeds from the sale of the securities issued by a mutual fund are invested in a portfolio of securities of various kinds, in accordance with the stated investment policy of the particular fund. Some funds invest primarily in securities offering current income; others concentrate on long-term growth securities; still others specialize in particular industries or classes of securities; and many offer various combinations of objectives. The shareholder in a mutual fund is entitled at any time to redeem his interest, usually at net asset value, or in a few instances upon payment of a charge. To facilitate this redemption privilege as well as to establish a price at which new shares are being offered, the value of a share in a mutual fund is calculated regularly, typically twice daily, on the basis of the market value of the securities held by the fund. Because of the continuous process of redemption, the mutual fund would be restricted and contracted in size, unless it continuously issued and offered new securities for sale.

Except in unique circumstances, virtually no shares in mutual funds are traded from one investor to another, and there is no significant trading market for such shares. In almost all cases, shareholders in mutual funds desiring to obtain cash for their shares redeem them with the issuing company. The securities issued by most mutual funds are

offered to the public at a price which includes a sales commission or sales load. There are some mutual funds whose shares are sold with no sales commission being charged. These latter funds are frequently called "no load" mutual funds. The activities of mutual funds are under the control of a board of directors or board of trustees. Directors or trustees are elected annually by the vote of a majority of the fund's outstanding voting securities.

Mutual funds usually contract an outside investment adviser for investment advice and other management services, and with a principal underwriter for the distribution of the fund's shares, pursuant to the statutory pattern established by the Investment Company Act of 1940, 15 U.S.C. § 80a–15. The investment adviser of a mutual fund furnishes advice to the fund with respect to its investment portfolio and the securities it should buy, hold, and sell. In some cases the adviser is empowered to purchase and sell securities for the fund. Some investment advisers also furnish supervisory and administrative services to the mutual fund. The investment adviser receives compensation for its services, usually in the form of a fee based on the total value of the assets being managed.

The principal underwriter of a mutual fund is engaged in the business of selling and distributing the securities issued by the fund to the investing public through brokers or dealers, or directly through the underwriter's own salesmen, or both. The principal underwriter either purchases the securities issued by the fund for resale or acts as agent for the fund in distributing the securities. Except in the case of a no-load fund, the principal underwriter receives a fee for its services, usually in the form of a portion of the sales commission included in the selling price of the shares issued by the mutual fund.

Mutual funds are required to be registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940. The activities of the mutual funds and their relationship with affiliated persons and

others are all subject to regulation under the Act. The investment advisers and principal underwriters who are plaintiffs herein, perform their services for the mutual funds they serve pursuant to contracts, the terms, execution and continuation of which are subject to the provisions of Section 15 of the Investment Company Act of 1940, 15 U.S.C. § 80a–15. The securities issued by each of the mutual fund members of the Institute are registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933, 15 U.S.C. § 77a et seq. All such securities are offered to the investing public by means of a prospectus which is initially filed with the Securities and Exchange Commission under the Securities Act of 1933 as part of the registration statement for the securities to which the prospectus relates.

As can be readily ascertained, the mutual fund community is composed of three principal members. First the body corporate of the fund itself whose membership is the general investing public. This relationship is analogous to the common productive corporate structure. However, the primary function of the investment corporation is to obtain the objectives which are outlined in their charter through the mutual investment of the funds contributed by the "shareholders". Aldred Inv. Inst. v. S. E. C., 151 F.2d 254 (1st Cir. 1945) cert. denied 326 U.S. 795, 66 S.Ct. 486, 90 L.Ed. 483 (1945). The relationship between the shareholder and the body corporate is plainly one of contract. Stevenot v. Norberg, 210 F.2d 615 (9th Cir. 1954); see also Schroeter v. Bartlett Syndicate Bldg. Corp., 8 Cal.2d 12, 63 P.2d 824, 825; Ellingwood v. Wolf's Head Oil Refining Co., 27 Del. Ch. 356, 38 A.2d 743, 154 A.L.R. 406 (1944); Corporations, 18 Am. Jur.2d § 463 (1965).

The management function of the mutual fund lies with the board of directors. They have essentially the equivalent powers as any corporate board of directors. In the same manner they are also responsible to their shareholders as fiduciaries. Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939); Brown v. Bullock, 194 F.Supp. 207 (S.D. N.Y. 1961), affirmed 294 F.2d 415 (2nd Cir. 1961).

The board of directors within its broad scope of authority has the power to enter into contracts with the other two members of the mutual fund community, that is the investment advisers and the underwriters. The functions performed by the latter two members of the mutual fund community is essential for the propagation of the investment or the mutual fund corporation. The interrelationship of these independent entities is one of contract which essentially determines the respective position occupied within the structure by each member. The independence of each member is governed by statute as is their interdependence; see the Investment Company Act of 1940, 15 U.S.C. § 80a–1 et seq.

The above few paragraphs outline the general operation of the mutual fund structure. A similar outline is now presented for the operation of the Account as created by the Bank and approved by the Comptroller pursuant to Regulation 9.

The Account as established by the Bank, operates as follows: the investor-customer tenders his funds, $10,000 or more, to the Bank pursuant to a broad authorization making the Bank the customer's managing agent. There is thus created a principal-agent relationship between each individual investor-customer and the Bank. The authorization includes specific authority for the Bank to invest the customer's funds, together with the funds of other customers who have given the equivalent authorization, through the commingled Account. Funds in the commingled Account are invested in a pool of securities, principally common stocks and securities convertible into common stocks, offering the opportunity for long term growth of capital and income. The Account is divided into "units of participation" of equal value in order to determine conveniently the proportionate interest of each participant. No certificates indicating the "units of participation" are issued by the Bank; however, the participant is informed by a nonnegotiable document as to how many units "of participation" are contained in his account.

A participation is transferable only to another person who has validly appointed the Bank as managing agent, and, because of the underlying agency relationship, the interest of a participant terminates upon his death or incompetency and his funds are withdrawn from the Account and held for his legal representatives. There is no sales charge imposed on amounts invested in the commingled Account nor is there any redemption charge incurred upon withdrawal from the Account. An investor-customer may terminate his participation in whole or in part on the basis of the net asset value of the units of participation being redeemed. The net asset value of each unit of participation is determined as of the close of business of each of a number of specified valuation dates by dividing the net asset value of the Account as of the close of business on the valuation date by the number of units of participation then outstanding.

The operation of the Account is supervised by a Committee of five persons, who act essentially as a board of directors of the Account. Initially the members were appointed by the Bank, but hereafter are to be elected annually by the participants. Each participant will be entitled to vote at the election of the Committee members and his vote will be weighted according to the number of "units of participation" in his account. At least 40% of the members of the Committee must at all times be persons not affiliated with the Bank, but the majority of the members may be, and are expected to be, officers in the Bank's Trust and Investment Division.

The Committee is authorized to enter into a management agreement with the Bank. The agreement and any amendments thereto must be approved by more than 50% of the participants at their annual meeting and the Comptroller's approval thereof must also be obtained.

In accordance with the management agreement, the Bank serves as investment adviser and custodian for the Account. The Bank, therefore, maintains a continuous investment program consistent with the commingled Account's

stated investment policy; it will determine what securities are to be purchased and sold, and will execute all transactions. The management agreement provides that the Bank will furnish all administrative, custodial and clerical services required by the Account and will pay all the organization costs and expenses. Subsequent maintenance fees, the cost of independent professional services, such as legal, auditing and accounting services, and the cost of preparation and distribution of notices to participants and proxy statements are to be borne by the commingled Account. The Bank will, however, reimburse the Account for the compensation and expenses, if any, paid by the Account to the members of the Committee who are not affiliated with the Bank; the other members of the Committee will receive no separate compensation for their services to the Account. For these services the Bank receives a fee equal to 1/8th of 1 per cent of the average of the net asset value of the Account taken on each valuation date during each fiscal quarter, which is approximately ½ of 1 per cent on an annual basis.

Essentially, the commingled management agency Account as delineated by the Bank's plan consists of two principal members, the first being the membership of the Account consisting of the investor-customer, and the second being the Bank which occupies a dual position, one as investment adviser to the Account and the other as general agent to the participants of the Account. The Bank can also be considered to occupy the position of underwriter for the units of participation which are issued to the investor-customer. The Committee of the Account occupies a position equivalent to that occupied by the board of directors of the mutual funds.

The Account has been approved by the Comptroller, even though it does not essentially comply with all provisions of Regulation 9 as promulgated by him. This action indicates that even though the Account as presently structured does not meet every minute detail of the Regulation, any future plans similar to the one established by the Bank will obtain

his approval under 12 C.F.R. § 9.18(c)(5). Therefore, it is not necessary for this court to analyze the differences between the Account as established by the Bank and Regulation 9. For the disposition of the issues before this court, the Account will be treated as if it completely meets the substantive requirements of Regulation 9. 12 C.F.R. § 9.

Before the merits of the issues in this case can be reached, two preliminary procedural matters must be noted. The Comptroller interposes the objection that the plaintiffs lack standing to sue, and that there is no justiciable issue before this court.

These issues—standing and justiciability—are nominally termed procedural only to differentiate between the initial hurdles which a plaintiff must overcome in order to obtain a judicial determination of his action on the merits, and the actual adjudication of the case on its substantive issues. This characterization often borders on mere semantics, since in order to obtain the proper perspective and focus upon the essence of these issues, as here, the substantive law upon which the plaintiffs premise their action must also be taken into account.

Standing has been, and remains, one of the most enigmatic areas of the law. 3 Davis, Administrative Law Treatise, § 22.18, at 291-92, n. 3. The courts have not developed a single formula which can be applied to a set of facts to determine whether a plaintiff has or does not have standing. The ever changing concepts which have been used in this area of the law can be readily ascertained by the many cases which have been cited in the briefs of both parties upholding their contentions. Due to the pervasiveness of definition in this area, the court is left with no alternative but to examine the long list of cases which hold that a particular plaintiff has standing on one hand, and on the other the long list of cases where the plaintiff has been denied his day in court because of the lack of standing.

Standing has been generally expressed by an indication that the alleged aggrieved party has asserted a legal right

which was his to assert, or has been injured, or has been threatened with injury. Perkins v. Lukens Steel Co., 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940), cf. FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869 (1940), Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). But standing should not be confused with the doctrine of standing to sue which provides that in an action in a federal constitutional court, by a citizen against a government officer in his official capacity, there is no justiciable controversy unless the citizen shows that such conduct invaded or will invade a private substantive legally protected interest. Associated Industries of New York v. Ickes, 134 F.2d 694, 702 (2nd Cir. 1943) vacated as moot, 320 U.S. 707, 64 S.Ct. 74, 88 L.Ed. 414 (1943), but see Scott v. Macy, 121 U.S.App.D.C. 205, 349 F.2d 182 (D.C.Cir. 1965). The former standing is basically a means by which courts can accept or refuse jurisdiction, and it generally alludes to the capacity of a party to obtain judicial review of an administrative action. See United States v. Storer Broadcasting Co., 351 U.S. 192, 197, 76 S.Ct. 763, 100 L.Ed. 1081 (1956) and Jaffe, Primary Jurisdiction, 77 Harv.L.Rev. 1037 (1964). The doctrine of standing to sue is generally directed towards the capacity of a plaintiff to present his case before a district court *ab initio*.

The question as to whether a plaintiff may obtain judicial relief in cases like this has been variously phrased, but the many appellations which have been devised do not detract from the underlying policy objective which permeates each of these cases. This policy is well enshrined in Article III, § 2 of the United States Constitution, that is, a "constitutional" federal court cannot be given power to sit in judgment and revise administrative action, since there is no justiciable controversy and the opinion thus issued would merely be advisory. See concurring opinion of Mr. Justice Frankfurter in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 149, 150, 71 S.Ct. 624, 95 L.Ed. 817 (1951), Muskrat v. United States, 219 U.S. 346, 354,

31 S.Ct. 250, 55 L.Ed. 246 (1911), Chicago & Southern Airlines, Inc. v. Waterman Corp., 333 U.S. 103, 113, 68 S.Ct. 431, 92 L.Ed. 568 (1948), United Public Workers of America v. Mitchell, 330 U.S. 75, 89, 67 S.Ct. 556, 91 L.Ed. 754 (1947), Associated Ind. of New York v. Ickes, supra.

Standing to challenge an administrative action can be premised on a statutory provision specifically appended to the statute under which the administrative action was promulgated or where the provision for review has been made generally applicable by the Administrative Procedure Act, 5 U.S.C. §§ 701-704 (recodified by Pub. Law 89–554, 80 Stat. 378). Since there is no specific provision for review of the Comptroller's regulation within the terms of the enabling statute, Title 12, Section 1 et seq., the terms of the Administrative Procedure Act will apply. Citizens Nat. Bank of Maplewood v. Saxon, 249 F.Supp. 557 (D.C. Mo. 1965), affirmed Webster Groves Trust Co. v. Saxon, 370 F.2d 381 (8th Cir. 1966). See also United Gas Pipe Line Co. v. F. P. C., 86 U.S.App. 314, 181 F.2d 796 (1950), cert. denied 340 U.S. 827, 71 S.Ct. 63, 95 L.Ed. 609 (1950).

The pertinent section of the Administrative Procedure Act specifically provides that:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

Under this statutory provision a plaintiff must allege that he has suffered a legal wrong or that a legally protected right will be adversely affected or aggrieved by the agency's action in order to obtain standing before this court. The plaintiffs here are alleging that they are suffering a legal wrong by the allegedly illegal competition made possible by the Comptroller's regulation, thereby being adversely affected or aggrieved. The exact amount of damages which will be incurred by the plaintiffs is rather difficult to assess in precise figures, but the Comptroller has predicted that

over the next five to ten years, commercial banks might capture as much as two billion dollars of mutual fund business.[3] The defendant interposes that the competition, even if illegally promulgated, does not create any legal wrong for which the plaintiffs may complain.

In support of its contention that the plaintiffs are not suffering any legal wrong and thereby lack standing to challenged the Comptroller's regulation, the defendant relies on a series of cases which contain the general principle that mere competitive injury made possible by governmental action does not confer standing on the injured party to restrain governmental action. Tennessee Electric Power Co. v. TVA, 306 U.S. 118, 137, 59 S.Ct. 366, 83 L.Ed. 543 (1938); Alabama Power Co. v. Ickes, 302 U.S. 464, 479, 58 S.Ct. 300, 82 L.Ed. 374 (1937); Perkins v. Lukens Steel Co., 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940); Texas State AFL-CIO v. Kennedy, 117 U.S.App.D.C. 343, 330 F.2d 217, 218 (1964); Benson v. Schofield, 98 U.S. App.D.C. 424, 236 F.2d 719 (1956), cert. denied 352 U.S. 976, 77 S.Ct. 363, 1 L.Ed.2d 324 (year); Kansas City Power & Light Co. v. McKay, 96 U.S.App.D.C. 273, 225 F.2d 924 (1955), cert. denied 350 U.S. 884, 76 S.Ct. 137, 100 L.Ed. 780 (1955). In these cases, the plaintiffs alleged that they were suffering economic loss from the government created competition, but it is significant to note that the competition created by government action in these cases was specifically authorized and sanctioned by Congress and was based upon specific statutory grounds.

Moreover, most of the cases cited by the defendant in support of his allegation that the plaintiffs lack standing have been assiduously distinguished by subsequent decisions of the Supreme Court, even though they have not been expressly overruled. In City of Chicago v. Atchison, Topeka

[3]Hearings on H.R. 8499, 9410 before the Commerce and Finance Subcommittee of the House Committee on Interstate and Foreign Commerce, 88 Cong.2d Sess. p. 26 (1964). See also Comment, Of Banks and Mutual Funds: The Collective Investment Trust, 20 Sw. L.J. 334 (1966).

& Santa Fe Railway, 357 U.S. 77, 78 S.Ct. 1063, 2 L.Ed.2d 1174 (1958), the Supreme Court gave explicit recognition to a competitor's standing to challenge illegal competition. That case involved two competitors, one of whom (Parmlee) had alleged that the other (Transfer) was operating illegally because it had not complied with certain licensing requirements imposed by the City of Chicago. Transfer argued that Parmelee had no standing to object to Transfer's allegedly illegal competition, but this argument was flatly rejected by the Court:

> "It is enough, for purposes of standing, that we have an actual controversy before us in which Parmelee has a direct and substantial personal interest in the outcome. Undoubtedly it is affected adversely by Transfer's operation. Parmelee contends that this operation is prohibited by a valid city ordinance and asserts the right to be free from unlawful competition.
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> * * *
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> "[Transfer] argues that a party has no right to complain about lawful competition, citing Alabama Power Co. v. Ickes, 302 U.S. 464, 58 S.Ct. 300, 82 L.Ed. 374, and Tennessee Electric Power Co. v. Tennessee Valley Authority, 306 U.S. 108, 59 S.Ct. 366, 83 L.Ed. 543. We do not regard either of these cases as controlling here. It seems to us that Transfer's argument confuses the merits of the controversy with the standing of Parmelee to litigate them. * * * Parmelee's standing could hardly depend on whether or not it is eventually held that Transfer can lawfully operate without a certificate of convenience and necessity." 357 U.S. 77, at 83–84, 78 S.Ct. 1063, at 1067.

With regard to some later cases holding that competitors had standing, see American Trucking Ass'ns, Inc. v. United States, 364 U.S. 1, 80 S.Ct. 1570, 4 L.Ed. 2d 1527 (1960), National Motor Freight Traffic Ass'n v. United States, 371 U.S. 223, 83 S.Ct. 311, 9 L.Ed.2d 273, rehearing denied 372 U.S. 246, 83 S.Ct. 688, 9 L.Ed.2d 709 (1963), affirm-

ing 205 F.Supp. 592 (D.C.D.C.1962) only on the merits but not as to the standing issue; Philco Corp. v. FCC, 103 U.S. App.D.C. 278, 257 F.2d 656 (1958), cert. denied 358 U.S. 946, 79 S.Ct. 350, 3 L.Ed.2d 352 (1959); Whitney National Bank in Jefferson Parish v. Bank of New Orleans & Trust Co., 116 U.S.App.D.C. 285, 323 F.2d 290 (1963), rev'd on other grounds, 379 U.S. 411, 85 S.Ct. 551, 13 L.Ed.2d 386 (1965).

In two recent cases challenging the authority of the Comptroller to promulgate regulations under other sections of the banking statutes, the plaintiffs have been granted standing to challenge the regulations over the objections of the Comptroller. Since these cases are directly in point they will be discussed at length. In Baker, Watts & Co. v. Saxon, 261 F. Supp. 247 (D.C.D.C. 1966), a number of plaintiffs, engaged in underwriting and distributing revenue bonds, sought a declaratory judgment that the Comptroller's regulations authorizing commercial banks, for the first time, to enter the revenue bond business violated the Glass-Steagall Act. The Comptroller raised the standing defense, citing the identical cases as brought forth in his present argument. Judge Holtzoff summarily disposed of that contention by stating:

> "The gravamen of the plaintiffs' claim for relief is that they are being subjected to competition by illegal activities of national banks. While no one may maintain a suit to restrain lawful competition merely because he is suffering an economic detriment, nevertheless, a person has a standing to complain against illegal competition, or specifically, against competition on the part of a person who lacks the legal right or power to pursue the competitive activities." 261 F.Supp. at 248.

Judge Holtzoff's opinion focuses not on the impairment of the plaintiffs' competitive position by the unlawfully created competition, but rather on the premise that but for the illegal competition condoned by the Comptroller's regulation, the plaintiffs would not have any economic detriment to base their complaint.

Likewise, in Georgia Association of Independent Insurance Agents, Inc. v. Saxon, 260 F.Supp. 802 (N.D.Ga. 1966), the district court denied a motion to dismiss for lack of standing. In that case the Comptroller had authorized, for the first time, national banks to sell insurance in towns with more than 5000 people, even though Section 92 of Title 12 of the United States Code permitted banks to act as insurance agents only in places with a population of 5000 or less. Plaintiffs were insurance agents and trade organizations representing insurance agents. Plaintiffs there alleged that the Comptroller was acting beyond his authority to issue the ruling which was in direct violation of 12 U.S.C. § 92 and that, as a result, national banks were able to illegally compete with the plaintiffs. The district court, in reaching its conclusion, observed that:

> "In Tennessee Electric Power Co., supra, and in Alabama Power Co. v. Ickes, 302 U.S. 464, 58 S.Ct. 300, 82 L.Ed. 374 (1937), the plaintiffs alleged that they were suffering economic loss from the government-created competition. In both cases the Supreme Court held that such economic loss alone did not confer standing on the aspiring plaintiffs. It is important to note that such competition was authorized by Congress and was based upon statutory grounds.
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> "In the instant case, the competition complained of is not explicitly authorized by statute, but rather is impliedly prohibited by the congressional grant of the power * * *." 260 F.Supp. at 803.

The district judge, in denying the Comptroller's motion to dismiss, further stated:

> "The Court is of the opinion that the defendant's attack on the plaintiffs' standing is without merit. Title 12 U.S.C.A.§ 92 has the effect of protecting insurance agents from certain competition. Surely, the plaintiffs have the right to their day in court to show that the protection afforded them by 12 U.S.C.A. § 92 has been violated." 260 F.Supp. at 804.

Subsequent to its finding of standing, the District Court ruled on the merits of the issues and granted the declaratory judgment and injunction which was sought by the plaintiffs. 268 F.Supp. 236 (N.D.Ga.1967).

Defendant places great reliance in his brief on the recent case of Pennsylvania Railroad Co. v. Dillon, 118 U.S.App. D.C. 257, 335 F.2d 292 (1964), cert. denied sub nom. American Hawaiian Steamship Co. v. Dillon, 379 U.S. 945, 85 S.Ct. 437, 13 L.Ed.2d 543 (1964).

In that case plaintiffs alleged not only that defendant Dillon had exceeded his statutory authority but also that the competitive activity which had been allowed was in and of itself illegal. The competing carriers challenged the authority of the Secretary of the Treasury to enroll certain vessels in the coastwise trade, allegedly in violation of the Merchant Marine Act of 1920, as amended, 46 U.S.C. § 883. That section prohibited the enrollment and documentation of vessels "jumboized" by installation of foreign-made midbodies. The Court of Appeals for the District of Columbia Circuit found that the carriers lacked standing even though they alleged the competition was illegal and in violation of the specific provision of the statute. The Court pointed out the dichotomy of Section 10 (a) of the A.P.A., namely the "legal wrong" aspect and the "adversely affected or aggrieved" aspect, as it related to the issue of standing and it concluded that:

> "Under either leg of Section 10(a), therefore, since appellants only complain of government enhancement of economic competition, they must demonstrate 'statutory aid to standing'." 335 F.2d at 295.

After analyzing the enabling statute the Court concluded that "Congress did not intend to insulate coastwise carriers from other domestic competition or to give them any legally protected right to be free of such competition." 335 F.2d at 295.

A close analysis of the holding in the *Pennsylvania Railroad*, supra, case does not require a determination of the standing issue adverse to the plaintiffs. In that case the Court of Appeals found that the underlying purpose of the statute under which the regulation was promulgated was to stimulate and encourage resort to domestic shipyards and thus to ensure them sufficient business so that their facilities would be adequate at times of national emergencies. 335 F.2d 292, at 295. The statutes, under which the regulation in issue was promulgated, were enacted to establish a clear Congressional policy which sought to separate national commercial banking from the securities business.[4] The primary intent of Congress was to segregate these functions and to allow separate entities to engage in these business areas. This clarity of purpose is garnered not only from the Congressional hearings reports of the Glass-Steagall Act, but also from the exactitude with which Congress has delineated the areas of common interest in this financial structure.[5] This strong general policy against the invasion of either field of endeavor by either entity is sufficient to postulate an interest upon which standing to challenge the regulation may be premised, cf. American Trucking Ass'ns, Inc. v. United States, 364 U.S. 1, 80 S.Ct. 1570, 4 L.Ed.2d 1527 (1960).

Therefore, by implication, the plaintiffs here have a right to complain of the competition which is being condoned under the Regulation. This competition is illegal in the sense that Congress has indicated its policy of separating the two financial institutions and this Regulation allows in an indirect manner a joinder of these interests. The plaintiffs

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[4]Hearings Pursuant to S.Res. 71 Before a Subcommittee of the Senate Committee on Banking and Currency, 71st Cong. 3rd Sess. (1931).

S.Rep. No. 77, 73d Cong. 1st Sess. (1933). H.R.Rep. No. 742, 74th Cong. 1st Sess. (1935).

See also 75 Cong.Rec. 9909 (1932) (remarks of Senator Bulkley).

[5]Note specifically amendments made to Section 24, par. Seventh of Title 12.

were the recipients by implication of Congressional protection.

Even if this invasion would not in fact cause a palpable injury[6] to be inflicted upon the plaintiffs which could be termed to be a legal wrong under the first leg of Section 10(a) of the A.P.A., now 5 U.S.C. § 702, the plaintiffs could have standing to represent the public interest as held in Sanders Bros. Radio Station v. F.C.C., 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869 (1940), Scripps-Howard Radio, Inc. v. F.P.C., 316 U.S. 4, 62 S.Ct. 875, 86 L.Ed. 1229 (1942), and F.C.C. v. N.B.C. (K.O.A.), 319 U.S. 239, 63 S.Ct. 1035, 87 L.Ed. 1374 (1943). See the application of this doctrine by Judge Frank in Associated Industries of New York v. Ickes, 134 F.2d 694 (2nd Cir. 1943), vacated as moot 320 U.S. 707, 64 S.Ct. 74 (1943).

The practical effect of the doctrine advanced by those series of cases grants standing to challenge the legality of administrative action to one who is in fact adversely affected by administrative action. Standing in those instances is predicated upon the theory that the plaintiffs do not represent their own private property interests but rather the interests of the public. In the instant situation the plaintiffs could be classified as private "Attorneys General" based on the premise that the public policy dictated by Congress in the Glass-Steagall Act is not being adhered to by the agency charged with its enforcement. See Philco Corp. v. F.C.C., 103 U.S.App.D.C. 278, 257 F.2d 656 (1958), cert. denied 358 U.S. 946, 79 S.Ct. 350, 3 L.Ed.2d 352 (1959), where the competitive interest of a manufacturer and not a broadcaster was held sufficient to satisfy the "person aggrieved" provision of the Federal Communications Act. See also Jaffe, Standing to Secure Judicial Review: Public Actions and Private Actions, 74 Harv. L. Ref. 1265 (1961); 75 Harv. L. Rev. 255 (1961), and Davis,

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[6]Bantam Book v. Sullivan, 372 U.S. 58, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963)–see also the discussion of the "Adversely Affected in Fact" doctrine promulgated by Prof. Davis, 3 Davis, Administrative Law Treatise § 22.02 (1965 Supp.)

3 Administrative Law Treatise §§ 22.04, 22.05, 22.11 (1958), (Supp. 1965).

Finally, a denial of standing, as urged by the defendant, would leave the plaintiffs and all others similarly situated without a right to seek redress against capricious, arbitrary and unwarranted Regulations issued by the Comptroller, however flagrant and contrary to the intent of Congress. This court, therefore, holds that the plaintiffs have standing to challenge the Comptroller's Regulation 9.

The Comptroller also asserts that there is no justiciable issue or controversy present in this case. This assertion is bifurcated on two grounds. The first is apparently premised upon the theory that the Comptroller's regulation permitting national commercial banks to establish the commingled Account does not regulate nor does it impose any obligation or duty upon the plaintiffs. The standards of justiciability are not limited to those situations in which the plaintiffs are directly regulated by the defendant government official. Indeed, in none of the branch bank cases in which the plaintiff was a state bank did the challenged regulations impose a duty upon or regulate the plaintiffs in any manner. e.g., First Hardin National Bank v. Fort Knox National Bank, 361 F.2d 276 (6th Cir. 1966); First National Bank of Smithfield, N.C. v. Saxon, 352 F.2d 267 (4th Cir. 1965); Union Savings Bank of Patchogue v. Saxon, 118 U.S. App. D.C. 296, 335 F.2d 718 (1964); Whitney National Bank in Jefferson Parish v. Bank of New Orleans & Trust Co., 116 U.S.App.D.C. 285, 323 F.2d 290 (1963), rev'd on other grounds 379 U.S. 411, 85 S.Ct. 551, 13 L.Ed.2d 386 (1965), Commercial Security Bank v. Saxon, 236 F.Supp. 457 (D.C. D.C. 1964), affirmed First National Bank of Logan, Utah v. Walker Bank and Trust Co., 385 U.S. 252, 87 S.Ct. 492, 17 L.Ed.2d 343, (1966) rehearing denied 385 U.S. 1032, 87 S.Ct. 738, 17 L.Ed.2d 680 (1967). However, the justiciability assertion made by the Comptroller in each of these cases was decided adversely to the Comptroller.

The district court in Baker, Watts & Co. v. Saxon, supra, summarily rejected the Comptroller's contention, stating that:

> "* * * a justiciable controversy obviously exists justifying the Court in entertaining an action for a declaratory judgment. The plaintiffs claim that the defendant is authorizing national banks to conduct certain activities in violation of the law and that these activities transgress the powers of the banks and that they are injurious to the plaintiffs." 261 F.Supp. at 249.

The second ground for the lack of justiciability is premised on the theory that only the Comptroller can challenge the acts of a national commercial bank when it acts in excess of its powers. However, the primary thrust of the plaintiffs' allegation is directed not at the national bank which is acting under authority granted by the Comptroller, but rather at the scope of the authority under which the Comptroller promulgated the regulation in issue. The district court in Georgia Association of Independent Insurance Agents, Inc. v. Saxon, supra, simultaneous with its denial of the motion to dismiss for lack of standing, rejected the Comptroller's assertions on the issue of justiciability. It unequivocally stated that:

> "The defendant further contends that * * * the Comptroller is sole enforcer of the National Banking Act. This contention is impliedly repudiated by the repeated decisions that banks have standing to challenge an allegedly illegal order * * * and was explicitly repudiated in an opinion by the Fifth Circuit Court of Appeals which stated: 'The fact that the Comptroller is charged under 12 U.S.C. § 93 with the duty of enforcing the National Banking Act certainly does not have the effect of prohibiting actions to enforce that law by any other party who might have a legitimate interest. Jackson v. First National Bank of Valdosta, 349 F.2d 71, at p. 75 (1965).'" 260 F.Supp. at 804.

A recent Supreme Court decision inferentially rejects the Comptroller's arguments on the lack of justiciability, Abbott Laboratories v. Gardner, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). The Supreme Court reversed and remanded to the Court of Appeals for the Third Circuit so that the Court of Appeals could consider the issues on the merits. The Court of Appeals had reversed the district court's decision without reaching the merits of the case, Abbott Laboratories v. Celebrezze, 352 F.2d 286 (3rd Cir. 1965). The district court had found that "a justiciable controversy arises where a plaintiff is confronted with substantial present or imminent harm. * * * the very presence of a threat of harm makes the regulations ready for review." 228 F.Supp. 855, 861 (D.C.Del.1964). The Court of Appeals reversed on the basis that no "actual case or controversy" existed as required for jusiticiability under the Declaratory Judgments Act. However, the Supreme Court decreed that "the impact of the regulations upon the plaintiffs is sufficiently direct and immediate so as to render the issue appropriate for judicial review at this stage." 387 U.S. at 152, 87 S.Ct. at 1517.

Having found that the plaintiffs have standing to seek redress and that they have presented a justiciable issue, we are now ready to seek a resolution of the subject matter involved in this litigation.

The principal issue involved in this controversy is whether or not the Comptroller has the statutory authority to empower national commercial banks to create, organize and manage the commingled Account. The gist of the activity of managing the Account consists of the purchase and sale of equity securities, nominally for long-term growth of capital and income, for the participating members. National Banks have only such powers as are expressly given by federal statute or by necessary implication therefrom, 12 U.S.C. § 24. Houston v. Drake, 97 F.2d 863 (9th Cir. 1938), Baltimore & O. R. Co., et al. v. Smith, 56 F.2d 799 (3rd Cir. 1932), and in some trust activities they may be authorized to act by the Comptroller in any capacity in which

competing state banks are permitted to act. 12 U.S.C. § 92a(a). See First National Bank in St. Louis v. State of Missouri, 263 U.S. 640, 44 S.Ct. 213, 68 L.Ed. 486 (1923), and Mercantile National Bank at Dallas v. Langdeau, 371 U.S. 55, 83 S.Ct. 520, 9 L.Ed.2d 523 (1962), City of Yonkers v. Downey, 309 U.S. 590, 60 S.Ct. 796, 84 L.Ed. 964 (1940), rehearing denied 310 U.S. 656, 60 S.Ct. 1071, 84 L.Ed. 1420, and Condon v. Downey, 310 U.S. 656, 60 S.Ct. 1071, 84 L.Ed. 1420, United States v. Palmer, 28 F.Supp. 936 (D.C.N.Y. 1939).

Authority to oversee trust activities of national banks which was vested in the Federal Reserve Board of Governors, 12 U.S.C. § 248(k) was repealed in 1962 when authority to regulate the fiduciary activities of national banks was transferred to the Comptroller. 12 U.S.C. § 92a, 76 Stat. 668, Pub.L. 87–722. Upon transfer of this authority the Comptroller issued Regulation 9 pursuant to which the First National City Bank established the commingled Account. In order to determine the validity of Regulation 9, it will be necessary to investigate each section of the relevant statutes and also to determine the intent of Congress when it enacted the relevant statutes. In order to complete the determination of the issues involved, it will also be necessary to determine whether or not the relevant state statute, here the N.Y. Banking Law, McKinney's Consol.Laws, c. 2, Section 100, allows local state banks to act in a similar fashion as is presently being allowed by Regulation 9.

This Regulation authorizes national banks to commingle managing agent accounts, allowing, therefore, the bank to purchase equity securities for the Account in general and not for any specific participating member. The essence of this activity is the purchase and sale of securities deriving thereby a benefit for the particpating members, and fulfilling the stated purpose of the Account.

The first statutory provision which is encountered along the logical progression to our conclusion is 12 U.S.C. § 92a

which delineates the trust powers which the Comptroller is authorized to grant to the national banks. Section 92a(a) provides:

> "The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located."

and under 12 U.S.C. § 92a(j) the Comptroller:[7]

> "* * * is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section and the proper exercise of the powers granted therein." 76 Stat. 668, Pub.L. 87–722 § 1.

Pursuant to this statutory authority the Comptroller can empower national banks the right to act in a fiduciary capacity and to issue regulations controlling this activity. From the statutory language it can be concluded that the Comptroller can grant trust powers to the national banks; but the real crux of this issue is whether or not the commingled Account can be considered a fiduciary activity as provided by the statute.

The Comptroller contends that there can be no doubt that the Bank's relationship to the participants in the commingled Account is a fiduciary relationship; however, this general statement, upon close analysis, is untenable. The principal-agent relationship arises from a contractual agree-

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[7]Section 11(k) of the Federal Reserve Act, as amended, 12 U.S.C. § 248(k) (repealed), empowered, in identical terms the Federal Reserve Board to issue regulations.

ment between the parties. The nature of this relationship gives rise to certain duties which are implied by the law, namely, a fiduciary duty and a duty of loyalty. The trustee and the agent have an equivalent duty of loyalty. The fiduciary duty of the agent is similar to but not the equivalent of the fiduciary duty of a trustee.

The many differences as to the characteristics of a principal-agent relationship and a trustee relationship are notable especially as they relate to the issue in this case. Consent of both principal and agent is a necessary requirement for the creation of the relation whereas the beneficiary of a trust need not consent. An agent is subject to the control of his principal, but a trustee is not subject to the control of the beneficiary. An agent can bind his principal by contract or otherwise, but a trustee has no such power with regard to his beneficiary. The agency relationship is terminable by the direction of the principal or by his death without any express provision to that effect, but this is untrue with respect to a trust unless the instrument so provides. See Restatement (Second) of Agency, Section 13, comment a, Section 14B, comments e to h, and Section 425, comment a. Note also Bogert, Trusts and Trustees, § 15 (2d. ed. 1965) p. 70 and Restatement of Trusts, 2d § 8, comment i.

The Bank and the individual participant of the Account enter into an agency relationship prior to or simultaneous with the participant's engagement with the Account. The Bank's role in this relationship is one of managing agent, not as trustee for the participant. A leading authority on the law of trusts has stated:

> "The duties and powers of the institution [e.g. a bank] as agent are determined by terms of the contract made with the customer; the duties and powers of the institution as trustee depend not only upon the terms of the trust but also upon the principles and rules of the common law and of statutes which are applicable to the trust relation. The liabilities of the instituion as agent depend upon whether it has failed to use due care in the perform-

> ance of the duties which it undertakes; its liabilities as a trustee depend upon whether it has committed a breach of trust. Ordinarily the responsibilities of the institution are more extensive where it acts as trustee than where it acts as agent, and it may incur no liabilities as agent for conduct which would render it liable if it were trustee." 1 Scott on Trusts, Section 8.1 Bank as Trustee or Agent (2d. ed. 1956).

The courts, as well as the recognized authorities in trust law, have distinguished sharply between the responsibilities of a true trustee and those of a managing agent, even where the latter is granted complete discretion in acting for his principal. It is, of course, established that the managing agent occupies a position of confidence, in which he must act with reasonable care and is held to a standard of conduct higher than that which prevails in the ordinary course of business in the marketplace. But the courts have stated plainly that this is not the high standard of care and strict accounting imposed upon a trustee, Stephens v. Detroit Trust Co., 284 Mich. 149, 278 N.W. 799 (1933); Anderson v. Abbott, 61 F.Supp. 888 (W.D.Ky. 1945); O'Connor v. Burns, Potter & Co., 151 Neb. 9, 36 N.W.2d 507 (1949). In both the *Stephens* and *O'Connor* cases the principal brought suit for accounting against the defendant managing agent on the basis that they had breached the high duty of care imposed upon a trustee. The decisive factor in both cases was that the relationship which existed between the parties had been freely chosen and established and, having entered into an agency contract, the investor could not assert that the relationship was in fact a trust.[8]

Contrary to the contentions made by the Comptroller, the managing agent relationship is not a true fiduciary relationship as it has been defined by the courts and by the recognized authorities in this field. Therefore, it is concluded that the managing agency relationship does not fall

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[8]But see, Saxon and Miller, Common Trust Funds, 53 Geo.L.J. 994, 1015, and Main, Common Trust Funds, 83 Banking L.J. 565.

within the traditional fiduciary powers as delineated in 12 U.S.C. § 92a(a).

Section 12 U.S.C. 92a(a), however, permits a national bank to act "in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located." This saving provision allows national banks to offer the equivalent fiduciary services to their customers that a local state bank might offer.

The Comptroller has authorized the First National City Bank, located in New York state, to establish a commingled Account pursuant to Regulation 9, and under the competitive provision of 12 U.S.C. § 92a(a) the authorization granted to First National City Bank may be legally valid, if the banking laws of New York state allow competing institutions to establish a commingled Account.

The general powers of state banks in New York state are contained in McKinney's Consol. Laws, c. 2, N.Y. Banking Law § 96 as amended, L. 1936, c. 324. These general powers have been supplemented by specific statutory provisions which grant state banks the power to act in a fiduciary capacity, N.Y. Banking Law §§ 100, 100–a, 100–b, 100–c, as amended. Each of these statutory provisions delineate the authorization of state banks with a definite degree of specificity, and none of the sections noted above allow a commingling of managing agency accounts. The only section which could even be deemed to inferentially grant this authority is Section 100–c, which relates to the power of banks to commingle funds held in a fiduciary capacity, specifically requiring that common trust funds be limited to moneys received and held "as executor, administrator, guardian, personal or testamentary trustee, donee of a power during minority to manage property vested in an infant or committee * * *."

A search of the New York state case law has failed to reveal any relevant judicial interpretation of this statutory

section. However, it has been held that state banks are prohibited to exercise any power which was not expressly granted. O'Connor v. Bankers Trust Co., 159 Misc. 920, 289 N.Y.S. 252 (Sup.Ct. 1936) affirmed 278 N.Y. 649, 16 N.E.2d 302; see also Nassau Bank v. Jones, 95 N.Y. 115, 47 Am.Rep. 14, (Ct. of App. 1884). These decisions indicate that New York state courts follow the federal rule, applicable to national banks, as expressed in Calif. Bank v. Kennedy, 167 U.S. 362, 17 S.Ct. 831, 42 L.Ed. 198 (1897), that the exercise of power not expressly granted to a national bank is prohibited. This restrictive interpretation of the powers granted under Section 100–c is further substantiated by noting that when the New York legislature has wanted to broaden the categories of accounts held and administered by banks which could be invested in a common trust fund, it has amended Section 100–c to do so.[9]

It is the conclusion of this court that the commingling of managing agency accounts is not authorized either under the federal statues or the New York banking laws.

Even if the managing agency accounts could be considered bona fide fiduciary activities, and, therefore, authorized by the present statutes, the commingling of these accounts would still be illegal under the provisions of the Glass-Steagall Act. In order to arrive at this determination it is necessary to make an exact characterization of the Account which was established.

As noted in the early section of this decision, a mutual fund continuously issues its own securities as does the com-

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[9]For example, that section was amended to permit a state bank acting as the "donee of a power during minority to manage property vested in an infant" to place the property so managed in a common trust fund, L.1958, c. 496 § 1; L.1965, c. 824 § 5. Note also the specific accounting and notice provisions which are contained in Section 100-c as strictly construed by the courts in In re Lincoln Rochester Trust Co., 201 Misc. 1008, 111 N.Y.S.2d 45 (1952). See also New York Banking Board Regulation, 3 N.Y.C.R.R. 11.91 which states that a common trust fund "may be operated only for true fiduciary purposes."

mingled Account. A mutual fund invests the proceeds from the sale of its securities in a diversified investment portfolio, in the same manner as the commingled Account. The mutual fund shares obtains for the investor an undivided interest in the fund's portfolio, as does a unit of participation in the commingled Account. Within certain limitations, a participating member of the Account can redeem his units of participation in a similar manner as the holder of mutual fund shares. A majority of the participating members elect the members of the Committee, who oversee the affairs of the Account in much the same manner as mutual fund stockholders elect their board of directors or trustees. The SEC has required the Account to register as an investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. The SEC pursuant to its authority under 15 U.S.C. § 80-3(c), has granted certain exemptions to the requirements of the Investment Company Act as it relates to board membership;[10] nevertheless it has recognized the similarity between the Account and an investment company.[11] The Bank and the Committee have entered into a contractual agreement under which the Bank performs managing and advising functions for the Account. This contract is the equivalent of the contracts which are entered into by the mutual funds and their investment advisers. These contracts are subject to and must be submitted for review by the SEC under the provisions of the Investment Company Act. There are some differences between a

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[10]The exemptions which were granted are being challenged in the Court of Appeals for the District of Columbia Circuit, National Association of Securities Dealers, Inc. v. Security Exchange Commission, Appeal No. 20,164, decided Nov. 21, 1967.

[11]The similarity between mutual funds and the Account have been noted by many authorities in the financial community, see Hearings on S. 2704 on Collective Investment Funds Before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency, 89th Cong.2d Sess. (1966); University of Pennsylvania Law School Conference on Mutual Funds, 115 U.Pa.L.Rev. 669; and Comment, Of Banks and Mutual Funds, 20 Sw.L.J.

mutual fund and a commingled Account,[12] but these are not substantially sufficient to create a legal differentiation between the two investment vehicles. The similarities between these related activities are a sufficient basis to draw an analogy from which an equivalency can be premised.

The Comptroller attempts to differentiate between the mutual fund investment vehicle and the commingled Account by attempting to establish a major difference between a mutual fund share and a unit of participation. This differentiation is premised on the basis that the unit of participation is not a security as such. This is mere tautology and a matter of semantics.

The United States Supreme Court has noted that for the purposes of the Securities Act of 1933 the test for a security is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. SEC v. W. J. Howey Co., 328 U.S. 293, 301, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946). See also S.E.C. v. Variable Annuity Life Ins. Co., 359 U.S. 65, 79 S.Ct. 618, 3 L.Ed.2d 640 (1959) and Prudential Insurance Co. of America v. S.E.C., 326 F.2d 383 (3rd Cir. 1964), cert. denied 377 U.S. 953, 84 S.Ct. 1629, 12 L.Ed.2d 497 (1964). Under this all encompassing definition, in its most comprehensive sense, whenever an investor relinquishes control over his funds and submits their control to another for the purpose and hopeful expectation of deriving profits therefrom he is in fact investing his funds in a security. The unit of participation in the commingled Account is in fact a security and has been so recognized by the SEC by its requirement that the Bank register the units of participation under the Securities Act of 1933.

The Comptroller argues, however, that the definition of "securities" for the purpose of the Securities Act of 1933

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[12]See Hearings on S. 2704 (1966) supra, at pp. 55 and 56.

is not applicable to define "securities" as the term is used in the Glass-Steagall Act. He asserts that this definition as judicially and administratively derived has no relevance to the meaning of the various provisions of the national banking laws. He bases this assertion on the allegedly different purposes which the laws have, namely that the securities laws were enacted to protect the interests of investors while the banking laws were enacted to protect the country's credit and currency and the solvency of the national banks. This differentiation fails to focus upon the primary essence of the complete regulatory scheme which the Congress enacted to mitigate the problems that the country faced in the 1930s. Congress, after extensive investigation, realized that the financial community needed stabilization in order to overcome the debacle which arose in 1929 and to prevent any further recurrences. It would be inconsistent to conclude that Congress did not intend to obtain the equivalent meaning for the term "securities" as used in the Securities Act of 1933 when it used the term in the Glass-Steagall Act which was enacted by the same Congress.[13]

By finding that the Account is an equivalent investment vehicle to a mutual fund and that the units of participation are in fact securities, it is, therefore, necessary to determine whether or not the Bank is barred from these activities by the provisions of the Glass-Steagall Act, Sections 16, 20, 21 and 32, codified in 12 U.S.C. §§ 24, 377, 378 and 78 respectively.

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[13]The Federal Reserve Board has repeatedly ruled that participations or shares in mutual funds are securities for purposes of the Glass-Steagall Act, and it has similarly characterized the units of participation in the bank sponsored commingled managing agency account. Federal Reserve Board Legal Memorandum, "Legal Considerations Under Section 32 of the Banking Act of 1933 in Connection With the Proposed Commingled Investment Account of First National City Bank of New York" (Dec. 15, 1965) reprinted in Hearings on S. 2704 (1966) at 581-588.

The first relevant section is 12 U.S.C. § 24 dealing with the explicit powers granted to the national banks by the Congress. For our analysis only paragraph Seventh is pertinent. It states:

> "To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. * * *"

The power of national banks to deal in securities has had a motley history, both legislatively and judicially. In 1823 the Supreme Court held that a prohibition against a national bank's trading and dealing in stocks was nothing more than a prohibition against engaging in the ordinary business of buying and selling stocks for a profit and it did not include purchases resulting from ordinary banking transactions. Fleckner v. Bank of the United States, 8 Wheat, 338, 351, 21 U.S. 338, 351, 5 L.Ed. 631 (1823). In First National Bank of Charlotte v. Nat. Exchange Bank, 92 U.S. 122, 23 L.Ed. 679 (1875), the Supreme Court stated that "Dealing in stocks is not expressly prohibited; but such a prohibition is implied from the failure to grant the power." 92 U.S. at 128. The Court in the First National Bank case was

interpreting, Rev.Stat. § 5136, par. 7, 15; 15 Stat. 101 § 8, the forerunner of 12 U.S.C. § 24 par. 7 which delineated the powers of the national banks.

The limitation on the national bank's power in security dealings was reiterated in subsequent decisions of the Supreme Court. Concord First National Bank v. Hawkins, 174 U.S. 364, 371, 19 S.Ct. 739, 43 L.Ed. 1007 (1898); California Nat. Bank v. Kennedy, 167 U.S. 362, 17 S.Ct. 831, 42 L.Ed. 198 (1897); McCormick v. Market National Bank, 165 U.S. 538, 17 S.Ct. 433, 41 L.Ed. 817 (1896); see also Birdsell Mfg. Co. v. Anderson, 20 F.Supp. 571 (W.D.Ky. 1937) affirmed 104 F.2d 340 (6th Cir. 1939), and Michelsen v. Penney, 135 F.2d 409, 424 (2nd Cir. 1943).

This implied limitation caused the national banks to establish security affiliates, organized under state law, to profit from underwriting and dealing in stocks and other securities. In 1927 Congress passed the McFadden Act which added to the list of banking powers in paragraph Seventh of Section 5136 of the Revised Statutes the following proviso:

> "Provided, that the business of buying and selling investment securities shall hereafter be limited to buying and selling without recourse marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation, in the form of bonds, notes and/or debentures, commonly known as investment securities, under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency * * *. [Act of February 25, 1927 (McFadden Act), Section 2(b), 44 Stat. 1226]"

This proviso was intended to be a confirmation and a regulation of the investment security business which was being conducted by the banks through their security affiliates. H.R.Rep.No. 83, 69th Cong. 1st Sess. (1926). By the provisions of this Act, the national banks were authorized by statute to engage in the business of underwriting and dealing in investment securities.

The storms looming on the horizon were not within the contemplation of very many people in 1927. It was not until 1931 when the Congress, graced with hindsight, sought the primary causes of the debacle which enveloped the country and had its repercussions throughout the world. The Congressional inquiry generated various statutes in an attempt to avoid a repetition of the debacle which had transpired. Among these statues were the Glass-Steagall Act and the Securities Act of 1933.

The Glass-Steagall Act in particular redefined the powers of the national banks and imposed severe limitations on their activity in the investment security business by amending 12 U.S.C. § 24, par. 7, and adding 12 U.S.C. §§ 78, 377 and 378. Section 24, paragraph Seventh, has been noted above. The other relevant sections are noted below. Section 32 of the Glass-Steagall Act, now 12 U.S.C. § 78, provides:

> "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities shall serve the same time as an officer, director, or employee of any member bank except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when in the judgment of the said Board it would not unduly influence the investment policies of such member bank or the advice it gives its customers regarding investments."

Section 20 of the Glass-Steagall Act, now 12 U.S.C. § 377, provides:

> "After one year from June 16, 1933, no member bank shall be affiliated in any manner described in subsection (b) of section 221a of this title with any corporation, association, business trust, or other

similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities: *Provided*, That nothing in this paragraph shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

"For every violation of this section the member bank involved shall be subject to a penalty not exceeding $1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Board of Governors of the Federal Reserve System, in its discretion, and, when so assessed, may be collected by the Federal Reserve Bank by suit or otherwise.

"If any such violation shall continue for six calendar months after the member bank shall have been warned by the Board of Governors of the Federal Reserve System to discontinue the same, (a) in the case of a national bank, all the rights, privileges, and franchises granted to it under chapter 2 of this title may be forfeited in the manner prescribed in sections 141, 222-225, 281-286 and 502 of this title, or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in sections 321-332 of this title."

Section 21 of the Glass-Steagall Act, now 12 U.S.C. § 378, provides:

"(a) After the expiration of one year after June 16, 1933, it shall be unlawful–

"(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business

of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities to the extent permitted to national banking associations by the provisions of section 24 of this title: *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligatons evidencing loans on real estate;

* * *

"(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both."

The obvious purpose of these legislative enactments was to divorce the banking business from the security investing business. Congress was so emphatic in promulgating this divorce, that it included a criminal provision to assure the efficacy and continuity of the separation; see 12 U.S.C. § 378(b), supra, and in some instances it imposed money penalties and forfeitures; see 12 U.S.C. § 377, supra. The many pages of legislative hearings reports which preceded the final enactment of the Glass-Steagall Act contain and outline the potential dangers which the involvement of commercial banking in the investment security business created.

These potential dangers were noted by the Comptroller of the Currency in his report of 1920, excerpts of which were cited by the Subcommittee of the Senate conducting the investigation:

> "Some 'securities companies' operating in close connection with, and often officered by, the same men who manage the national banks with which they are allied, have become instruments of speculation and headquarters for promotions of all kinds of financial schemes. Many of the flotations promoted by the 'securities corporations' which are operated as adjuncts to national banks have proven disastrous to their subscribers, and have in some instances reflected seriously not only upon the credit and the standing of the 'securities companies' by which they are sponsored, but also in some cases have damaged the credit and reputation of national banks with which the 'securities companies' are allied.
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> "It has been established clearly by decisions of the United States Supreme Court that a national bank can not, except as authorized by the Federal reserve act, hold the stock of other national banks or the stock of other corporations, but these adjunct or auxiliary companies whose stockholders are identical with the stockholders of the national banks with which they are connected by various ties and devices frequently deal actively in stocks, and they also sometimes acquire the ownership or control of other banks, National and State, through their stock purchases.
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> "In times of rising prices and active speculation some of these auxiliary corporations have made large profits through their ventures and syndicate operations, but their losses in other periods have been heavy, and they have become an element of increasing peril to the banks with which they are associated. The business of legitimate banking is entirely separate and distinct from the kind of business conducted by many of the 'securities corporations', and it would be difficult, if not impossible,

for the same set of officers to conduct safely, soundly, and successfully the conservative business of the national bank and at the same time direct and manage the speculative ventures and promotions of the ancillary institutions. These varying institutions demand a different kind of ability and experience on the part of those who manage them, and the two types of business when combined with one management are likely to be operated to the advantage of neither.

* * *

"These ancillary companies are being used with increasing frequency for promotion of speculation and for dealing in bonds and stocks, often those of new and unseasoned issues, and which are attended with improper hazard risk, and as a means of enabling banks to do, indirectly through their instrumentality, things which they can neither safely nor lawfully do directly." [See Hearings Pursuant to S. Res. 71 Before a Subcommittee of the Senate Committee on Banking and Currency, 71st Cong. 3d Sess. pp. 1067-1068 (1931)]

The Senate Subcommittee Report also outlined the organization and functions of the security affiliates. Among one of these functions was the operation of investment trusts which bought and sold securities purely for investment or speculative purposes, Hearings, S.Res. 71, p. 1057. These investment trusts were the equivalent of our present day investment companies.[14]

Another drawback which the Subcommittee Report recognized was that "in the case of a trust company or a bank with a trust department, the possession of a security affiliate may adversely affect the independence with which fiduciary activities are exercised." Hearings, S.Res. 71, p. 1064.

[14]S.E.C. Report on the Public Policy Implications of Investment Company Growth, H.R.Rep.No. 2337, 89th Cong. 2nd Sess. p. 33, Fn. 3 (1966).

There can be little doubt as to what Congress intended to do by the enactment of the Glass-Steagall provisions outlined above. Section 16, 12 U.S.C. § 24, par. 7 prohibits national banks from not only underwriting securities directly but also limits the capacity of the national banks in the purchase and sale of securities. Awotin v. Atlas Exchange Bank, 295 U.S. 209, 55 S.Ct. 674, 79 L.Ed. 1393 (1935); cf. United States v. Philadelphia National Bank, 374 U.S. 321, 329, 83 S.Ct. 1715, 10 L.Ed. 2d 915 (1963), First Natl. Bank in St. Louis v. State of Missouri, 263 U.S. 640, 44 S. Ct. 213, 68 L.Ed. 486 (1923), Genessee Trustee Corp. v. Smith, 102 F.2d 125, 127 (6th Cir. 1939), Guaranty Trust Co.. United States, 44 F.Supp. 417 (E.D. Wash.1942), affirmed 139 F.2d 69 (9th Cir. 1943), United States v. Palmer, 28 F.Supp. 936 (S.D.N.Y. 1939). Section 20, 12 U.S.C. § 377 effectively provides that national banks may not be affiliated with an entity which is engaged principally in the business of purchasing, selling, or underwriting securities. Section 21, 12 U.S.C. § 378 specifically provides that it is unlawful for any entity which is engaged in the business of purchasing, selling, or underwriting to also be engaged in the banking business. Section 32, 12 U.S.C. § 78 prohibits banks and investment organizations from having interlocking directorates, and common officials and employees. Through this legislative scheme Congress intended to separate these previously integrated activities, and it made its intent explicity clear. Merchants National Bank of Mobile v. Commissioner of Internal Revenue, 199 F.2d 657 (5th Cir. 1952); Commissoner of Internal Revenue v. Merchants Nat. Bldg. Co., 131 F.2d 740, 741 (5th Cir. 1942); cf. Paramount Pictures v. Langer, 23 F. Supp. 890, 902 (D.N.D.1938), reversed as moot 306 U.S. 619, 59 S.Ct. 641, 83 L.Ed. 1025 (1938), Morgan Stanley & Co. v. S.E.C. 126 F.2d 325, 329 (2nd Cir. 1942).

The Supreme Court has stated with specific relation to Section 32, 12 U.S.C. § 78, that "It [Section 32] is a preventive or prophylactic measure. The fact that respondents